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### ABRIDGMENT

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# First Part

OFMY

## La Coke's Institutes;

WITH 12 Bg

Some ADDITIONS explaining many of the difficult CASES, and shewing in what Points the LAW has been altered by late Resolutions and Acts of Parliament.

Printed by the Affignee of Edward Sayer Esq; and are to be sold by John Malthoe in the Middle-Temple-Cloysters. 1711.

V. A ABRIDGMENT THE Some ADDITIONS excluining many of the difficult Gasas, and thewing in what Points the LAVV has been altered by fate Refolutions and Aller Particlant. Printed by the Affignee of Edward ! Soyer Liq; and the to be fold by Total Egy atthough the and all the A Cloffers 1711...

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## The Reader is defired to correct the following Mistakes before he reads the Book.

DAge 2. Line 20. after Merchant read amy. P. 4. 1.21. dele one. P. 14. l. 33. for full r. fully. P. 15. 1. 16. 1. comma after Confirmations. P. 20. 1.5. d. comma at Grant. L. 27. d. they were. P. 26. l. 32. r. Heirlooms. D.31. 1.12. r. one Heir of the Body. Ibid. in Marg. r. 29. b. b. 39. in Margin r. Cro. El. p. 43. l. 17. f. her r. him. 6. 56. 1. 9. after same r. Estate. p. 59. 1. 5. d. in the first Case, or of the Husband in the Second. p. 63. in Margin . 1 Lev. 312. r. 212. p. 65. l. 19. r. El. 10. p. 66. in Marg. : 10 Rep. 60. p. 69. 1. 9. f. Executors r. Execution. p. 73. . 22. after Term put a comma. p. 75. l. 29. f. it r. the Distress. p. 76. l. 10. f. and die r. and C. die. p. 80. l. 2. r. alternis. p. 89. l. 7. after Lessor r. L. or Y. p. 101. l. 2. f. lay r. lie. p. 102. l. 12. f. Freeman's r. Freemens. p. 107. l. 13. f. he r. Leffee. p. 109. l. 6. d. not. p. 110. l. 8. after for r. now; in Marg. r. 457. P. 112. l. 18. f. a Half r. a 3d Part. p. 113. l. 14. r. worn. p. 128. l. 1. f. in T. r. in Fee. p. 141. at l. 8. r. in Marg. 1 Roll. Abr. 725. p. 143. 1.6. r. into. p. 152. l. 6. f. of r. by. p. 163. in penultima r. Burgensi. p. 179. l. 23. f. in r. of. p. 214. l. 21. r. were granted. p. 225. l. 31. d. comma after simple. p. 234. Marg. instead of these r. this and the next. p. 236. 1.9. after Partiality make a full-point. p. 240. l. 20. r. doubled. p. 264. l. 3. r. æquiparatur. p. 267. l. 20. r. the Land. p. 269. l. 29. f. or r. of. p. 284. l. 18. f. his Father r. the Feoffor. p. 292. l. 8. f. Estate r. Condition for the Safe-guard of his Tenancy. p. 293. in Marg. d. Co. L. 208. b. p. 296. l. 32. f. or r. and. p. 297. l. 20. f. that r. this. p. 304. l. 4. r. Heirs. p. 328. l. 4. r. died. p. 329. l. 18. r. vite. p. 337. l. 13. after one r. be. ibid. 22. f. thefe r. there. p. 342. l. 9. after comes r. in. p. 345. 1.8. f. as r. in. p. 351. l. 24. r. remains. p. 374. l. 30. f. for r. from. p. 390. l. 18. f. Ten't L. r. Ten't of the Land. p. 403. l. 25. before Releafe r. Confirmation or. p. 408. 1. 17. f. should r. might. p. 411. l. 28. r. yet might. p. 422. in antepenult. f. and r. Oc. p. 424. l. 15. instead of he bad discontinu'd the Wife's Estate, r. the Rev'n had been in the Husband. p. 468. l. 11. r. subject.

## The Realier is defined so correct the following

Page a. Line 20. effer Merchant real any. P. a. Lar. Committee Committee Real Land Real Committee C sa in Margin T. Co. M. p. as. Live horr b k & L. D. atter farmer. Effect. p. 50. h. 5. d. in the first Cafe, or of the Husband in the Second. 1463, in Markin 1 Lov. 312-1. 212. m. 6g. l. 19. r. El 16. p. 66. in Midle. to Rep. So. p. 69 Lock Enguery, Enguise p. 14. . se., eder Tarm par a elimina. p. 3 f. b. ag. f. it ri fine West p. 76. I. vo. I. and dier. and C. die. p. 30. 1.2. Minnie p. Sp. L. p. efter Lower L. Lower T. L. 191. Lt. p. for t in a Pergum's belocution. Start. the word of the state of the st direction of the land of the land of the contract of the nd p. 141. 201 S. r. in Maig. 1 Ash. See 728. p. 149. Servine p. 152 l. 6. f. of r. ll. p. 165, is pendulud slunging p. 179 l. 25. f. in r. sk. p. 215 l. 21. r. 2200 conted. p. ant. I gr. d. comma siver haple p. agr. large, inflered of shelp r. this and she will. p. 256. ho. steet Astroiding makes fall-points proper here which of probably a secondarium probably and the ter v. the Teeffer. p. 192. 1. 8. f. Klare v. Serdicherfor Local paragraph of the contract of the contrac 1 18. 1. Wild. O. 537. 1. 19. after one r. de. soid. the theen, time, p. 342. L. 9. effer comer n. in. in. gare. L. L. Low v. des. po. 3 ct. L. t. revereins to trail & gra. tory, from proceedings to Tory L. v. Torice of the Land 1.27. 1.27. halore Reliefer. On himning be. p. 40%. in appropriate, f. and r. Och p. 424. Les. le lead of La had disconsinued the Wife Plate, & the Rev's had been in the Elmland. p. 463. L :1. 1. fuloff.

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## PREFACE

HE Authors whom I have attempted to abridge have ever been universally admired: The one, for his great Perspicuity, and uncontested Authority; the other, for his infinite Variety of curious and feful Learning: So that I cannot doubt out my Endeavours would be in some neasure acceptable, if I could any Way ontribute to the better remembring, or asier understanding, of what all who fudy our Laws defire to be perfect Masters of.

It has been a great Discouragement? o the Study of the Law, that these Authors, which are generally recompended to be first read, are in many Parts so very difficult, that it is scarce possible:

possible to understand them without a previous Knowledge of those common Grounds which great Men are apt to think beneath the Dignity of their Writings to take Notice of. This I fear has caused many to forsake their Studies has caused many to for sake their Studies with an Aversion to the Law it self, and a misconceiv'd Opinion, that gene-rally it is not to be reconciled with the natural Notions of Right and Wrong; and that most of its Distinctions consist se rather in the empty Chicanery of Words, La than in any real Difference in the Na-a, ture of Things. I have therefore, for no the greater Ease of Beginners, endea of woured to explain many of those Cases se which usually appear most intricate a first Reading; and the I am sensible to that many of my Explications will seen retristing and obvious to those who have on made any Progress in their Studies, yell if they may any Way prove useful to them for whose Benefit alone they were the control of the state of design'd. I hope they will not be can te demned as wholly unserviceable to thes Bublick. KOYGEL !

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### The PREFACE

Many also have been discouraged om laying the Foundation of their tudies in these excellent Books, beuse great Part of them is not Law at fear his Day; and they cannot easily perlies pade themselves to read so much abelf, ruse and obsolete Learning, with that ene- ttention which is necessary to the perthe Et Understanding of it. But whong; per considers how great a Coherence nsist bere is between the several Parts of the rds, aw, and how much the Reason of one Na-ase opens and depends upon that of for nother, will, I presume, be far from idea linking any of the old Learning Case seles which will so much conduce the at the perfect. Understanding of the solid sodern. I could by no Means theresees think it proper to leave out any have oint of Law, merely for its being , ye fused; but that young Students may ful throw what is now in Use, I have wer ew'd in what Cases the Law has been. con ter'd by Parliament, or my Lord Coke to the been contradicted by Modern Relutions.

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I have taken Care to have all a own Additions printed in a particul Character; so that I hope I shall not censured for having blended them without depends on the Authority of the incomparable Authors, since no one of be in Danger of being led into a Mistake thereby.

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### ABRIDGMENT

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The first Part of my Lord COKE's Institutes.

### Of FEE-SIMPLE.

Enant in Fee-Simple, is he who hath Lands or Tenements to hold to him and his Heirs for ever.

The word Tenere, from which enant is derived, sometimes signifies to ave the Estate of the Land, as non Tenet leaded by the Tenant to a Pracipe, signifies nat he has not the Freehold of the Land in question: Sometimes it signifies to hold and by some Service: Sometimes it signifies to be bound, as Teneri & sirmiter object in a Bond, &c.

Feodum idem est quod hareditas, and signifies

at Land belongs to a Man and his Heirs. In Land belongs to a Man and his Heirs. In the Service, is call'd his Fee, as when Tent in Avowry pleads extra feedam, & c. this mifies that the Land is not holden of the vowant, but none can plead this, unless

B

he take the Tenancy upon him, for it is unreasonable that the Lord's Title to the Seigniory (bould be disputed by one who has nothing to do with the Tenancy.

Simplex idem est quod Legitimum vel Purum, therefore a Fee conditional, or quali-

fied, are not properly Fees Simple.

Hereditaments are either Real, as Lands and Tenements; or Personal, as Annuity; no mix'd, as Dignity of Fart. or mix'd, as Dignity of Earl, Oc. of fuch a Place.

Some can take a Fee only for the Benefit na Some can take a Fee only for the Benefit na not hold any Freehold, and if they make a fuch Purchase, the K. on Office found shall have it. If they dye, the Law casts their over Estate on him without Office, for the Free big hold cannot be in Abeiance; nor can an Alien variable a Lease T. of Land, but if he be a Mer. A chant, he may take Lease T. of a House so his Habitation, for he cannot carry on his so Merchandise without it; but if he dyes of the leaves the Realm, K. shall have it: If K stern makes him a Denizen, he may purchase A and his Issue born after his Denization shall usb inherit; if he dyes without such, the Lance, shall escheat to the Lord. thall escheat to the Lord. bth

The Purchase of one attainted of Tres aive fon or Felony goes to the King; the Purve w chase of one guilty of Felony, and after Will wards attainted, shall escheat to the Lord his for in the surface the Purchaser was dead inpact Law when he purchased, not so in the other.

If any Corporation civil or religious Pur ay chase Land without Licence, by the Statuteigh of Mortmain the next Lord may enter withings

he first Year after the Purchase, in his Dehalf Year may enter, and so shall all the Mesnes in their Turns; in Detaute hall have it for ever. By a favourable li-Construction, K. shall presently seize In-Mesnes in their Turns; in Default of all, K.

do

construction, K. shall presently seize Interitances which lie not in Tenure. An annuity, because it is Personal, is not Mortty; nain.

One when at full Age may persect, or without Cause alledged, waive a Purchase nade by him within Age, so may his leir, if he dyes without agreeing at sull nake ge.

Non compos making a Purchase, and reheir overing his Memory, can't waive it; agree it he may, if he doth not, his Heir may lier vaive it.

Mer Abbot purchasing without Consent of his solvent, cannot waive it at all; nor can his Successor, unless it was to the Prejudice es of the Church, as if too great Rent were of Keserved, &c.

Chase A Wife can take no Estate from her shall usband, but she may take from a Strantanter, but the Husband may divest it; if he oth not, the Wife after his Death may

the not, the Wife after his Death may Trea aive or perfect it, so may her Heir, if she without doing either.

after Whoever takes a Fee, must either take it Lord his natural Capacity, or in a politick and impacity; therefore, the anciently a Grant of the Lord to his Commoners, that their is Put say leading to their Waste should not be statuteightned, or a Grant to a Lord, homiswith has suis tam liberis quam Nativis, or purtil chase

chase of Land by Parishioners or Inhab tants, or Church-wardens, or probi homin de Dale, were holden to be good, yet the Law is otherwise now. But Church-war dens and Parishioners may purchase Good for they are a special (a) Corporation for th

(a) Keil. 425 Purpole.

Wite of 7. S. Earl of P. Dean of D. & may take by fuch Name, and the Purcha will be good, tho' the Christian Name ! mistaken, for there can be no Doubt who meant by fuch Name, & utile per inutile m vitiatur: But in Pleading, the proper Nam must be shewn. Nor is it safe in Pleadin to translate Sirnames, as to call one name Williamson filius Willi, for tho' our Christia Names were for the most Part known to the Romans, and we know how they would has called one of such a Name in Latin, it is other wife of Sirnames. Name of Confirmation different from that of Baptisin, one oughts be used. Primogenitus filius, omnes liberi, aut he redes, 7. S. are good Names of Purchase.

No Limitation what soever to a Baltan before he is born can give him an Estate ab tho the Words are to the next Issue of F. Jan begotten of J. N. Legitimate or Illegit mate. So that the he afterwards become a

Bastard Eigne, yet is he not helped.

But a Bastard having gained a Name by at Reputation, may purchase by it, and all other lawful Subjects, the Ideots, Lepen and Occ., except Monsters, and Men of Religion professed of some Order. An Hermaphre To ditte man purchase according to the Ser the dite may purchase according to the Sex the it prevails.

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The Grant of an Office by King or Subt, concerning the Administration, Proeding or Execution of Juffice, or King's evenue, to one unskilful, is void, for the ablick is injured by it. Nor is a judicial fice grantable in Reversion, for the the rantee be never so fit at the Time of the rant, he may become unfi when it takes effect. or can the Stewardthip of a Mannor be ranted to an Infant.

K. may be faid to be feized of an Office no he can't be an Officer) in respect of

s Power to grant it to another.

idin By 27 El. 4. A Purchaler for good Confiration shall avoid all former fraudulent iftia onveyances. One having a good Leafe to the for Years, forged one for 90 Years, and has ld the forged Leafe, and all his interest in other e Land to J. S. this is no Purchase of the able Consideration, for J. S. knew not of the able Consideration, for J. S. knew not of able Confideration, for J. S. knew not of , nor constacted for it, nor was it at all nsidered in the Rargain.

Terra, derived a Terendo, Strictly fignifies able Land only, but in a legal Sente it F: Somprehends all forts of ground. Land built legit most worthy, and shall be first demanded come a Pracipe, for Things are respected in aw as they are more or less useful to Man.

The by later is not demandable by that Name, day at so many Acres of Land aqua coopers ant of Land passeth Houses built on it, ligio regions est solum, ejus est usque ad calum.

The a Man by no sort of Conveyance can list it a Fee to move out of one p'son into anoter, as he shall appoint; yet by Custom, a

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Fee may be moveable: As where 100 Acr have Time out of Mind been fet out yearl to several Persons, so many to one, so m ny to another, fo that the Number only certain, the Place uncertain; so if it b agreed on Partition betwixt Parceners, the one shall have the Land the first Year, o half Year, the other the next, and fo b each of them is feveral, and moveable, as we share the Possession Notes. The Possession of the Possess as the Possession. Note, That Partitions be tween Parceners are favour'd and privilege because their undivided Estate was created, an

cast on them merely by Act of Law.

Grant of Vestura Terra passes the Under income wood and Sweepage; but the Soil, Timb Grant or Mines pass not by it, nor by Grant file the Herbage, tho Livery of Seisin be mad Eu But it is holden, i Vent 393. that the Grant er Vestura Terræ with Livery passes the Soil, be the Vestura Terræ with Livery passes the Soil, he the Grant of Prima Vestura for no certa fish Time passes the first Cutting only, from su passes a Day to such a Day it passes the Soil. If or grants to the Grantee of the Herbage of he wood all his Land in his Possession, the Whole shall pass, for he is so far possessed Mathe Whole, that he may have an Astion of Trustee pass for a Trespass in any Part of it. Grant separalis Piscaria, passes neither Water in Soil; Aqua passes the Water and Piscar Water not the Soil: All the Profits, with I very, pass the Soil; Boscus passes Soil as we as the Timber of any Wood-Land; Boscus passes no nore than the Law would have implied that niftes no more than the Law would have implied that all neturn, and such like Words pass Wood the La

Land of fuch fort, but no other. Pastura

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land of such sort, but no other. Pastural and only passes Land of that Nature, but life Feedings in another Soil. Pascuum signifies any Land whatever used for feeding the of Cattle. But Land can't be demanded by the word Pascuum in a Pracipe.

General Words, as Honour, Isle, Castle, will pass Things compound, as Honour or Castle will pass divers Mannors, or we Things Simple of different Natures, as as as a Fearm will pass Houses, Lands, Tenements; and Plow-Land, or so much as one Plow can ill, an Ox gang, or as much as one Ox an till, may pass Arable, Meadow, Pasture, and Ind Wood, & necessary for such Tillage; can till, may pass Arable, Meadow, Pasture, and and Wood, &c. necessary for such Tillage; mb Grange passes Barn, or Stable, with its Curint ilage; Messuage passes House, Orchard and Curtilage; Stagnum or Gurges, pass Warre and Soil, (in a Pracipe for Gurges, &c. l, b he Esplees must be laid in taking of the wish;) Forrest, Warren, Chase, or Vivary, pass both the Ground and Privilege.

A Grant de centum libratis Terra, will pass Land of that value:

Tenement passes any thing whereof a

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Tenement passes any thing whereof a Man may be seized, ut de libero Tenemento; Hereditament, any thing wherein a Man may have an Inheritance.

If one makes a Feossiment with general Warranty, i. e. against all Men, and there is he was mention made of the Writings concerning the Land, the Feossor shall retain all that are material for the Desence of the Title, and that serve to deraign the Warranty Paramount, i. e. That entitle him to vonch some where bound to marrant the Land; but the Land is La

Feoffee shall have those that concern the Posfession, as Court Rolls; but if the Warranty be only against the Feoffor and his Heirs, the Feoffee shall have all the Deeds; for in the first Case the Feoffor is bound at his Peril to defend the Title, and therefore shall keep what will enable him to do it; in the latter Case he is safe, so long as he impeaches not

his own Feoffment.

There be 8 formal Parts of a deed of Feoffment, 1. The Premisses, which name the Feoffor and Feoffee, and the Certainty of the Land to be convey'd. 2. The Habendum, which names the Feoffee again, and limits Vi the Certainty of the Estate. 3. The Tenendum, which must at this Day be of the W Chief Lord, by force of the Statute of Quia Clause of Warranty. 6. In cujus rei Testi-monium sigillum meum apposui, containing Ber the Sealing, which is an essential Part. 7. The Date containing the Day, Month, the Stile of the K. and Year of the Lord. It was anciently holden, that a Deed dated before the limited Time of Prescription was not pleadable, therefore they often omitted the Date. If no Place be mentioned, the Feoffee may alledge it mide wherever De he will. 8. The Clause of his Testibus of that late disused, was anciently written by the At fame Hand by which the Deed was, and the the Deed was read to the Witnesses, and W then their Names entred.

No Exceptions are good against a Witness, but those that prove him to want Discretion, to be a Party in Interest, an Infidel, or a

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erson infamous, as one attainted for giving falle Verdict, or of Conspiracy at the K.'s uit, or convict of Perjury, Pramunire, Forery on the 5 of El. or Felony, or one that by udgment has lost his Ears, or stood in the illory or Tumbrel, or been branded, (que unt Minoris culpa sunt Majoris Infamia;) or Champion recreant.

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But many Exceptions that are good against Juror, are not so against a Witness, as Afinity, or Confanguinity, how near to ever. For if a furor be challeng'd, his Room may ealy be supplied by others; but it is otherwise of a Vitnels.) So of Outlawry in a Personal Action. And one named a Diss'or in the Writ, has been allowed to be a Witness to he Deed; otherwise the Demandant by a Fititious Supposal, making the Witnesses Parties o the Action, might defraud the Tenant of the

Benefit of their Testimony.

art. But where the Witnesses in a Deed are to nth, be joined to the Jury, (as they frequently It were in former Times, by Process awarded ited against them, as well as the lury,) the was fame Exceptions that are good against a Juted for are good against them, because if they the should, with the Jury, find it to be the ever Deed of the Party, no Attaint will lie, for of that more than 12 affirm the Deed : Yet an the Attaint will lie against the Jury if they and should find that it is not his Deed, for the Witnesses cannot teltity a Negative. es, is the Party's Deed, they can't swear the concre- trary; 3 r tho' this may be collected from what they positively swear, their Office is only to testify what they know, not to make Inferences from it. When Witnesses are joined to a Jun

there must be more than one.

When a Tryal is by Witnesses, as of the Challenge of a Juror, or Summons of Tenant, the Affirmative ought to be pro ved by two, or more. But when the Trya ers is by Verdict, Judgment is given on that flu and that is given on Evidence. Violenta pra sumptio est plena probatio; as if one be stabbed by in a House, and another run out of it with income a Knife bloody, and none else in the House air Prasumptio probabilis moves little, prasumptio but levis moves not at all. Wife can't be aid Witness for or against her Husband. Not lar can a Party to an usurious Contract be a sor Witness against the Usurer, tho another in informs, for by this means he would avoid both the care Bond. his own Bond.

K.'s ancient Charters of Inheritance had for the Clause of his Testibus, as those of Nobili-ty still have; in K.'s other Grants, teste meips can

is at this Day used instead of it.

A Deed of Feoffment may be good with infout any of the 8 formal Parts; as if Land the be given to A and his Heirs, without any Al Habendum, &c. or to hold to A. and his heirs, without naming him before the Habendum, yet both Deeds are good. For rich the word Heirs, which alone is an effential Word, his not wanting, and no Deed shall be void, which by any Construction can be made good, his but it must be sealed and delivered. but it must be sealed and delivered.

None born out of lawful Wedlock can ed be an Heir. Nor a Monster, i. e. one wanting humane Shape, as having a Dog's- w

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Head, but one having Fingers or Toes too hany or too few, or Limbs distorted, is o Monster. Hermaphrodites shall inherit

ccording to the Sex that prevails.

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An Alien can neither inherit, nor have n Heir; one made a Denizen by K.'s Leters Patents may purchase Lands, and his flue, born after the Denization, may be Heir o him. One attainted of Treason or Feloo him. One attainted of Ireaton of Feldbed by can neither inherit, nor have an Heir;
with and his Blood is so corrupted by the Atuse sainder, that it cannot be absolutely restor'd
but by Parliament: But if a Person attaintbe and be pardoned by the King, and purchase
Nor Lard, and have issue a Son, and dye, such
be a Son shall be his Heir; but if the Father have
other in elder Son alive at the Time of his Death,
wood born before the Attainder, the younger Son
born after cannot be Heir to the Father;
had for the elder Son, the be disabled to inherit, had for the elder Son, tho he be disabled to inherit, bili-bilities is still the elder Brother, and the Younger eipso cannot be Heir while he is alive.

But the Issue of one made a Denizen shall inherit the Father, tho' he have an elder Broand ther alive, born while the Father was an Alien: For Denization has not such a Retrohis spect as Naturalization, which makes a Man a natural Subject ab initio; but a Denizen derives his very Essence as a Subject from the Delord, nization, and his Son born before never had any
noid, more Right to inherit, than if he had not been
his Son at all.

It is clear that the Sons of one Attainta-But the Issue of one made a Denizen thall

ead;

It is clear, that the Sons of one Attaintcan ed, born before the Attainder may inherit one another. But my Lord Coke holds other-wife of the Sons of an Alien, or Person at-

tainted; but has been since contradicted, for a Brother may in Mortdancester make himself Vaugh. 274. Heir to bis Brother without mentioning the Fa-1 Ven. 413. ther.

Outlaws in Debt, Hereticks convict, Persons excommunicate, or attainted of Pramunire, Lepers, Ideots, &c. may be Heirs. Child born in second Marriage within nine Months after the first Husband's Death, may be Heir to the first or second Husband, which he pleases. At this Day, an Heir can't fue a Bond made to his Ancestor.

Fish at large in a Pond, Doves in a Dovehouse, go to the Heir, those that are caught

to the Executors.

### Nemo est Heres viventis.

Rol. A. \$ 32. con.

By a Gift to A. and his Heir, the Heir there is no Possibility of its continuing for ever, wh not a Freehold descendible, because such must less continue during Lives in Esse only, and no Man or can create a new Estate. A Gift to A or his branches passes a State for Life only; a Gist lid to A and B. & Haredibus, passes no more to A. and B. & Haredibus, passes no more De for the Uncertainty; but a Gift to A. & Hare redibus, gives a Fee, without adding fuis. De

A Lease T. is made to J. S. Parson and his Successors, and after a Release is made to whim and his Successors; yet he takes but for me Life. For, the word Successors in both Cases L is void, in the first, because no sole Corporation, except K. can be posses'd of a Chattel; in the se- De cond, because the Release can't enure to him in and that Capacity, in which he had nothing before tut

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Grant by K. Decano & capitulo habendum hareibus & Successoribus suis, vests in their politick Capacity only; grant to J. S. and his Heirs nd Successors, vests in his natural Capacity only; and tho it may be said, that the K. is deeived in using the word Heirs in the first Case, ind that of Successors in the Second, yet those Vords which were used only to make the Grant nore firm, shall not be construed to make it void.

A Gift to A. & liberis suis, and their Heirs, gives a joint Fee to him and his his Children then born. The word Heirs inludes all Heirs whatfoever, whether near or

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Grant

The Isle of Man, tho' a Territory distinct rom the Kingdom, has been granted under he great Seal, and is therefore descendible

he great Seal, and is therefore descendible Heir by the Rules of Common Law.

Feoffment is the only Conveyance, which when the Feoffor's Entry is Lawful, doth lestroy all wrongful Estates, because the Feoffman or re-entring to make Livery, re-continues his ormer Estate. All Corporeal Inheritances Gist had at Law pass by Feoffment, without note Deed: Incorporeal Inheritances, i. e. such as the neither Tangible nor Visible, pass by Delivery of the Deed. Carta, properly signifies and Deed of Feoffment; Factum any Deed de to whatsoever. Do, is the aptest Word of Feoffment.

Cases A Fee may pass without the word Heirs, I. By Devise, by the express Intent of the Devisor, as where Land is devised to A. indicate the shall pay 20 l. for it to the Exemptes Intent of the Devisor. To a Devise to A. to give, or sell, or for grant

ever, or in Fee-Simple, or to him and his Assigns for ever, or to him & Sanguini Suo, give a Fee-Simple; but a Devise to A. & femini suo, gives an Entail only; a Devise to him and his Assigns, gives a State for Life

2. By a Fine sur conusans de droit come ceo que, Ge. for it supposeth a Precedent Gift in

Fee.

3. By a Release of one Jointenant or Parce. ner, to one of the others only, or to all; or by Release of Right by Diss'ee to Diss'or; because the Person to whom it is made is seised of a Fee before. In like manner by a Release of a Seigniory or Rent-Charge made to the Tenant of the Land; for tho' to some Purposes it may be said na to pass an Estate, it gives no Benefit to the Te- tal nant, but by Extinguishment of the Estate of him that releases.

4. By Recovery, for where a Fee is demanded by the Writ, the Judgment must be intended

to pur sue it.

5. By Creation of Nobility by Writ y without any Limitation, which of it fel no ennobles the Blood to a Man and his Hein Lineal, unless the Writ limit it to the ut Heirs Males, &c. But Creation of Nobility oll by Patent, which is of late more generally lein used, gives no Inheritance without proper en Words.

6. In Gifts that take effect by Reserence lift as if A. give Land to B. and his Heirs, and eat then B. infeoff A. as full as A. infeoffed So him.

7. In Gifts of Frank-marriage, or Frankal ran moin, for the Law had a particular Favour to

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Works of Piety, and the Advancement of Famiies by such Gifts; and ancient Grants must be expounded, as the Law was taken when hey were made.

8. In Gifts to K. or Corporation aggre-

gate, for they never dye.

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9: In grant of Rent to a Parcener to make Vid. Supra. Partition equal, for it is granted in lieu of her 6.

Inheritance of the like Value given her by Law. 10. In the Grant of the Privilege of an Affart by K. at a Justice-Seat, for there is a

pecial Law of the Forest.

11. But the words, Heirs or Successors, are bfolutely necessary to pass a Fee in all iory the Grants and Feoffments, Releases and Confirnations, enlarging Estates, Warranties, Barains and Sales, &c.

All a Man's Sons shall, by the Custom, qually inherit Gavelkind Land; but the Eldest alone shall take a Remainder limited o the right Heirs of the Father. ndel hay be got wrongfully by Dis'n, &c. or Vrit y a bare Agreement in Pais to a Dis'n to

Hein A Purchaser of Lands in Fee dying withthe ut Issue, Brother or Sister, his next Cousin pility ollateral of the whole Blood, becomes his leir; but his Cousin of the half blood may rally deir; but his Coulin of the half blood may rope e his Heir of a State Tail, for the Descent of ch Estates is governed by the Form of the ence ift in which the Donor's Will is contained. Liand east Descent is in a right Line from Father offer Son, Collateral is for Desault of lineal eirs, as to ones Father's Brother, or nkal randfather's Brother, &c. Hares in liour usa recta prefertur heredi in linea transver ali.

II.

versali, & propinguior excludit propinguum,

propinquus remotum, remotus remotiorem.

One may be next of Kin, jure repriesentationis, or jure propinguitatis; the former shall take as Heir, the latter by Purchase. As if I have two Nephews, A. the Elder, and B. the Younger; and A. have Issue and dye, and I purchase Land in Fee, and dye without Issue, the Issue of A. shall be my Heir, for whatfoever the Ancestor, if living, should have inherited, the lineal Heir, jure representationis, shall inherit; but if a Rem'r had been limited to my next of Blood, B. should take it before the Issue of A. because he is next, jure propinquitatis.

If a Son purchale Land in Fee, and dye without Islue, his Uncle shall be his Heir, not his Father; for it is a Maxim in Law, that Land cannot lineally afcend; yet the Father is next of Blood to the Son, and shall take a Rem'r by Purchase limited to the next of Blood to the Son. And where the Uncle inherits the Son, he is not absolutely Heir, for if the Father have a Son born afterwards, he shall enter upon the Uncle; fo on if a Sister inherit her Brother, and the Fa-our ther have afterwards iffue a Son, he shall en and ter into the Land as Heir to his Brother and if he have a Daughter and no Son, the it I shall be Coparcener with her Sister.

Where the Uncle is Heir to the Son, and enters into the Land, or presents to Church, or gets Seisin of the Rent descend eref ed, Oc. and dyes without Islue, the Fathe the any shall have the Land, Advowson, Rent, & eir as Heir to the Uncle; but if the Uncle dy

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efore he has gained an actual Seisin, the ather cannot be Heir; or if the Son and Incle both dye feised only of a Rev'n spectant on a Freehold, the Father cannot e Heir, for he that claims as Heir in Fee, hust make himself Heir to him that was if actually feifed of the Freehold and Ineritance.

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The Uncle shall have Benefit of a Warenty made to the Son and his Heirs, but he dye without iffue, the Father shall ave no Advantage thereof; fo the Uncle eing diss'ed, should at Law have been ound by a Warranty made by the Son to he Dissor, but if he had afterwards dy'd ithout iffue, the Father being his Heir dye hould not have been bound thereby, for Varranty always descends to the Heirs of im that made it, or of him to whom it as made. If the Son conclude himself by leading concerning the Tenure and Services Land, the Uncle shall be bound by it, shall not the Father, being Heir to the Incle, because he cannot be Heir to the ound by Estopels which run with the and. If a Purchaser of Land in Fee dye without Is and those of his Blood of the Part of the Is Father shall inherit such Land, and those is Father shall inherit such Land, and those is Father shall inherit such Land, and those shall erefore the Brother or Sister of the Father's stater, or of the Father's Father's Father, or of the Father's Father's Father, or of the Father's Father, or of the Father's Father's Father, or of the Father's Father's Father, or of the Father's Father, or of the Father's Father, or of the Father's Father, or of the Father's Father's Father, or of the Father's Father's Father, or half sir Representatives, shall first inherit; on Failure hould not have been bound thereby, for

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Failure of Such Confins, those of the Blood of it Father's Mother or of the Father's Father's M ther, &c. shall inherit. And Q. If those the Blood of the Latter shall not be preferre Pl. C. 448. because there is a longer Descent of Male An cestors from her? And if the Purchaser have n Heir of the Part of his Father, the Heir of the Part of his Mother shall inherit; as the Brother or Sister of the Mother, or of the Mother's Father, or of the Mother's Father Father, &c. who shall inherit before any of the Blood of the Mother's Mother; but of one dye seised of Land which descended the him as Heir to his Mother, or any of he shall inherit it; so e converso, if May seised as Heir to his Father, &c. so have the Blood of the first Purchaser.

A. Seised as Heir on the Part of the Moof ther makes a Feoffment, and takes back

ther, makes a Feoffment, and takes back State in Fee, and dyes without iffue, this is a new Purchase, and shall go to the He has on the Part of the Father. If he make He Feoffment on Condition and dye, and the Heir on the Part of the Father enter for Breach, the Heir on the Part of the Mothe in shall enter on him, for the Feoffment being the defeated, the Land is in such plight as if I it never had been made. If he make Make Feoffment, reserving a Rent to him and he Heirs, and dye, the Heir of the Part othe the Father shall have it; but if he make Cast Lease L. or T. or Gift in T. the Heir of the Part of the Mother shall have the Rent, as it can cident to the Rev'n; so if one seised of ing ther, makes a Feoffment, and takes back Man

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of Mannor, as Heir on the Part of the Mother, ad made a Feoffment of Parcel thereof before he Statute of Quia emptores, referving a Rent hould have had it, as being Parcel of the Mother Mannor; and if a Man have a Rent Seck eir of the Part of his Mother, and the Tenant

Mannor; and if a Man have a Rent Seck eir of the Part of his Mother, and the Tenant as the grant that he and his Heirs may distrein for the t, his Heir of the Part of the Mother shall then have the Distress as appurtenant to the Rent. If one so seised make a Feossment to the but assess of the Mother shall have the Use. If Settled. Of him and his Heirs, the Heir (a) of the Law now Settled. Of hich Heir have a Seigniory, and the Tenancy 3 Lev. 407. If Mother shall have it. If the Tenant of Land descended from the Mother be impleaded, and vouch, and recover against the Vouchee and dye, the Heir of the Part of the Mother shall sue Execution.

Jane S. has issue A. and dyes, and Land so given to A. and his Heirs on the Part of the Heirs of Jane S. and afterwards A. dyes do the Mother, or a Rem'r is limited to the make Heirs of Jane S. and afterwards A. dyes do the Mother, or a Rem'r is limited to the father shall inherit, because the Fee vested Mother in A. as a Purchaser, and no Man can be he reate a new Inheritance; for which Cause, as a Land may be given to a Man, and his Heirs on Part of the Father, Litt. Sect. 354. in which make Case none of the Heirs of the Part of the Mother of the Males, the Law rejects the word Males; yet and be Land may be given to a Man, and his Heirs on Part of the Father, Litt. Sect. 354. in which make Case none of the Heirs of the Part of the Mother of the Males, as long as it continues, descends accorded of lag to the Rules of Law, tho' it be Careminable t, as it tance, as long as it continues, descends accorded of ing to the Rules of Law, tho it be enterminable

for want of Heirs on the Part of the Father. If there be Lord, Fem Mesne, and Ten't, and the Fem bind herself and her Heirs to acquit the Ten't and marry, the Ten't grant, to the Husband and his Heirs, that they thall not be bound to acquit him; yet after the Death of the Husband and Wife, their Iffue, as Heir to the Wife, shall be bound to Acquittal. For it shall not be in the Power of one Ancestor, by any Act done to or by him, to take from another the Power of binding

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one that is common Heir to both.

If one dye feifed of Land as Heir of the Part of his Father, it shall rather Escheat than go to any one that is not Heir of the Part of the Father; fo e converso, where Lands descend from the Mother. As Land may Escheat to the Lord, for want of Hein of the Blood of the first Purchaser, so may it by Judgment against the Ten't for Felony three Ways, Aut quia suspensus per Collum; ant quia abjuravit Regnum; aut quia utlagatus; but no Land shall be forfeited by him that is hang'd by Martial Law, in furore Belli. The Land whereof one attainted of High Treaton was feis'd Escheats to K. of whomsoever they were holden; but if the Son be attainted of Treason, and the Father dye feised, the Land shall eicheat to her, the Lord, for the Father dyes without Heir, with No Land shall be forfeited by Outlawry on Process on a Writ of Appeal before the Plaintif has counted, but that which the Dest aine had at the Time of the Outlawry pronounced, but by Outlawry on an Indictional is forfeited which he had at the Time

Vid. Supra.

14.

of the Felony done; for in the first Cafe, the Record whereon the Forfeiture is grounded, hews not the Time when the Felony was committed, but in the second it does.

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Land given to a Body Politick, goes back to the Donor, when the fame is diffolved.

Land always descends to the worthiest of Blood; therefore the elder Brother, and all his Polterity, shall inherit before the younger, or any of his; and all the Females of the Part of the Father, before any of the Males of the Part of the Mother.

None shall be Heir of Land in Fee-Simple, or to a Warranty, or fue an Appeal of Death as Heir, unless he be of the whole Blood, viz. both of the Father and Mo-

her. If an elder Brother purchase Land in Fee nd dye without Islue, his Sister of the whole, not his younger Brother of the hall be his Heir, because he is of the whole of If Ten't in Fee of Land alf Blood, shall be his Heir; but where

the y, Advowson, an Use, &c. have a Son and Daughter by one Venter, and a Son by anoher, and dye seised, and the elder Son dye without Issue before actual Seisin, the ounger Brother shall have them as Heir to he Father, but if the elder Brother shall ained an actual Seisin, the Sister should ave them as Heir to him, quia possession fractic de feodo simplici facit sororem esse haredem; which depends upon the Maxim, that who Fa-

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ever claims a Fee-Simple as Heir, must be Heir to him that was last actually seised thereof, (or to the Purchaser.) But if A feised in special T. with a Rem'r in Fee, have two Sons by diverse Venters and dye, the elder as Heir in T. enter and dye with out Issue, the younger as Heir to the Fa- the ther shall have the Fee, because the elder the Brother was not actually seised of the Fee. Brother was not actually seised of the Fee-

Simple, but only of the State in T.

If the Father make a Lease T. rendring Rent Jun and dye, and Leffee enter, and the elder Son dye before he has received the Rent, yet the le actual Possession of Lessee T. is the actual les Possession of the elder Brother, and the Si-Cor Her shall be Heir. So if one enter into the Is Land as Guardian in Socage, or Chivalry to the elder Son. But if the Father make and Leafe L. and dye, and the elder Son re-tier ceive the Rent and dye, the younger Bro ther shall have the Land as Heir to the Father, because the elder Brother was not seistard Eigne receive Rent reserved by the starter, on such Lease and have Issue and dye the Mulier shall be barr'd, for he cannot prove ere the other a Bastard after bis Death.

The elder Brother enters, and endows his I Father's Wife of a 3d Part, and dyes without Issue, the younger Brother shall have the Rev'n of the said 3d Part; but if the elder had made a Lease L. and dyed and the Lessee had endowed the Wife, and Ten't in Dower had dy'd during the Life of Lessee L. the Sister, as Heir to the elder we Brother, should have had this Rev'n one For

be or in the first Case, the Endowment of ised we Wise deseated the elder Brother's Seisin f A f the 3d Part, and the Rev'n thereof de-Fee, inded on an Estate which the Wise was in from dye, or Husband, so that in Judgment of Law a ith ev'n only descended; but in the other Case, Factor Rev'n depended on a Lease made by der me elder Brother.

Fee-The Son's general Entry into a Parcel of and, gives him an actual Seisin of all the Rent and in the same County whereof he is sei-Son I'd in Law, but where another is feised of the le Land to which he has a Demand, in re-

the le Land to which he has a Demand, in re-cual lect of a Diss'n, Alienation in Mortmain, e Si-ondition broken, &c. his general Entry in-the Part, is good for so much only. There shall be no possessio Fratris of a Rent, ke a dvowson, Common, &c. If the elder Bro-re-ter dye before the Church becomes void, Brow the Rent due, &c. But a Husband shall Fall Ten't by Curtesy in respect of his seis seisin in Law, where it was impossi-fie for him to get an actual Seisin, for in the the state or Son shall have the Land, and prove refore the actual Seisin of either of them shall cide it; but in the Second, the Favour which

cide it; but in the Second, the Favour which is his Law shows to the Husband that has Issue by Wife, shall not be lost without some default in have not to the younger, and make the Single of the Heir of an Estate T. or a Dignity, Life Crown Land, for in these Cases the elder w regards him that is Heir to the first once, or to him that was first created Noble

For

ever claims a Fee-Simple as Heir, must be for Heir to him that was last actually seised be thereof, (or to the Purchaser.) But if A feised in special T. with a Rem'r in Fee, and have two Sons by diverse Venters and dye, or the elder as Heir in T. enter and dye with out Issue, the younger as Heir to the Fatte ther shall have the Fee, because the elder be Brother was not actually seised of the Fee.

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Simple, but only of the State in T.

If the Father make a Lease Trendring Rent and dye, and Lesseenter, and the elder Son dedye before he has received the Rent, yet the actual Possession of Lessee Trendring Rent and dye before he has received the Rent, yet the actual Possession of Lessee Trendring Rent and Possession of Lessee Trendring Rent and Elder Son described the Rent, and the Signature of the state of the Possession of the elder Son. But if the Father make a dye and the elder Son reter ceive the Rent and dye the younger Brown ceive the Rent and dye, the younger Bro ther shall have the Land as Heir to the Father, because the elder Brother was not sei-Vise sed of the Freehold of the Land; but if Balle s stard Eigne receive Rent reserved by the state Father, on such Lease and have Issue and dye, the Mulier shall be barr'd, for he cannot prove the other a Bastard after his Death. the other a Bastard after his Death.

The elder Brother enters, and endows his Lather's Wife of a 3d Part, and dyes without Issue, the younger Brother shall have the Rev'n of the said 3d Part; but if the elder had made a Lease L. and dyed and the Lessee had endowed the Wife, and Ten't in Dower had dy'd during the List of Lessee L. the Sister, as Heir to the elder we Brother, should have had this Rev'n one

For

be for in the first Case, the Endowment of sed be Wife defeated the elder Brother's Seisin A f the 3d Part, and the Rev'n thereof de-fee, inded on an Estate which the Wise was in from lye, or Husband, so that in Judgment of Law a ith ev'n only descended; but in the other Case, Far the Rev'n depended on a Lease made by der me elder Brother.

The Son's general Entry into a Parcel of and, gives him an actual Seisin of all the and in the same County whereof he is seison in Law, but where another is seised of the Land to which he has a Demand, in retual tect of a Diss'n, Alienation in Mortmain, ondition broken, &c. his general Entry inthe Part, is good for so much only.

There shall be no possession for a Rent, dvowson, Common, &c. If the elder Broter dye before the Church becomes void, and the Rent due, &c. But a Husband shall

the Rent due, &c. But a Husband shall Fa. Ten't by Curtesy in respect of his sei. Ife's Seisin in Law, where it was impossible are for him to get an actual Seisin, for in the the of Case it stands indifferent whether the Heir dye the Father or Son shall have the Land, and wrove eresore the actual Seisin of either of them shall cide it; but in the Second, the Favour which

cide it; but in the Second, the Favour which is his Law shews to the Husband that has Issue by ith Wife, shall not be lost without some default in have m.

It if The Possession of the elder Brother shall yed and this Heir of an Estate T. or a Dignity, Life Crown Land, for in these Cases the lider w regards him that is Heir to the first y'n: onee, or to him that was first created Noble,

For

Noble, and the Crown Lands jure Coron attend the Crown, and if the King pur chate Gavelkind Lands to him and his Heir it shall descend to his eldest Son only, an if he have the Crown as Heir to his Mothe fuch Land shall descend to the Heir of the Part of the Mother; if the right Heir be a

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16. tainted, yet shall the Crown descend upo (a)1 H.7.4. him, and when he takes (a) upon him the Ro Dignity, the Attainder is discharged.

> The word Inheritance is not only prope ly used where one has Land by Descent, be where he has Land in Fee, or Tail by Pu chale; as in a Writ of Right, or cui in Vil for Land purchas'd, the Words of the Wi are, quam clamat effe jus & hareditatem sua But in the Stat. of W. 2; c. 5. By Confin ction of the whole, 'tis taken only for the

Wife's Inheritance by Descent.

One may have an Inheritance, tho'l neither take it by Descent, nor properly by 1 Purchase, but by Creation; as where the King, creates a Man a Peer by Letters h neither take it by Descent, nor properly h tents, or by Writ: The first Ennobles a Mar tho' he never fits in Parliament, but the & cond does not until he fits there; for the Issue, whether he be a Baron or no, must tried by the Parliament Records; therefore Peer of another Kingdom cannot be such there by that Name. One may be made to here by that Name. One may be made to hobble for Life only, not for Y. A Woman marrying a Peer is thereby made Noble during her Life, unless she afterwards marry a Commoner; but one born Noble continues so, let her marry whom she ay Wall.

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Of Things whereof one may have a manual Occupation, Possession, or Estate, as of Lands, Rents, &c. he shall plead that he is seised in Dominico suo, ut de feodo; of Things which lie ot in fuch manual Occupation, as an Adowson, &c. he shall say, that he is seised ut e Feede. It may be observed from hence, that n Judgment of Law, a Man can receive no rofit of an Advowson, therefore at Comnon Law no Damages were recoverable n quare Impedit, and Guardian in Socage annot present, because he can take nothing or it, and he shall meddle with nothing, ut what he may be liable to account for: a Writ of Right of Advowson, the Paon shall lay the Esplees, not in himself, ut in the Incumbent.

There is a great Difference between Advoho'l celesia; the first, is when there be two severy but Patrons and Incumbents of the same thurch, in which Case, if either Patron be ins Prosident the may have a current to the same thurch. Mar esentare ad medietatem Ecclesia, or he may ve a Writ of Right de Advocatione mediefor the sis, and either Incumbent may have a Fuefore scationis, is when an Advowson descends two Parceners, and they agree to present Turns; in which Case, either of them in Nome or Turn, if disturbed, may have a quare ole dispedit, &c. prasentare ad Ecclesiam; but similar either of them bring a Writ of Right, it Noble ust be, de medietate Advocationis. As there in the ay be two several Parsons of one Church, two Men may make but one Parion.

18.

One can't have a larger or greater Estate than a Fee-Simple, whether it be absolute or qualify'd; and there cannot be two Fees Simple of the same Land in the same Perfon. If the K.'s Donee be attainted of Treafon, or convey the Land to K. both the Fees are confolidated into one; and yet there may be a Fee-Simple qualified in one Person, and a Reversion in Fee in another by Act of Law, as where the Lord enter on his Villein, being a Donee in Tail, the Reversion in Fee continues in the Donor but one Fee can't depend on another by the Act of the Party, therefore a Remainder la mited on a base Fee is void.

Purchase, in Latin Acquisium, or Perquis tum, is the Possession of Tenements which one has by his own Deed or Agreement and not by Descent; it is always intende to be by Title, and most properly by Con veyance, whether made freely without an Confideration, or for Money, &c. Bu those that claim meerly by Act of Law, Lord by Escheat, Tenant in Dower, or b Courtefy, cannot be faid to be Purchafers If a Monument, Ge. set up in a Chure

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W.

in honour of my Ancestor, is defaced by the Parson, or any other, I may have an Actio on the Case against him, and some say, the the Wife or Executors that fet it up in have an Action. By Custom the Heir m have fome Chattels, as Heir-Loom, (as the best Bed, Table, &c.) and shall sue that it them only at Common Law. The ancie cirs Jewels of the Crown are Heir-Looms, and the bid. not devisable.

19.

## Of FEE-TAIL.

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Those Inheritances which are made Estates Tail by W. 2. were Fees-Simle conditional at Common Law, and are till descendible in the same Manner as bebre; the Donce having Issue inheritable live, was before the faid Statute esteemed b have performed the Condition to three Purposes. 1. To alien the Land. 2. To orfeit. 3. To Charge it. But if he had lied without Alienation, the Land should ot have descended to any collateral Heir. iz, to one not within the Form of the Gift: nd if the Issue had died before the Donee ad alien'd, he having no Issue at the Time f the Alienation, could not barr the Donor f his Reverter on Failure of Issue, but he hight barr the liffue born after, because he laim'd a Fee-Simple as Hom A Feme Donee hight with her Husband, by levying a ine, bar the Islue; but if they had alien'd rithout Fine, the Islue should have had a ormedon in Descender. These Rules held as the King, whether he were Donor or onee, but he could never be barr'd of his offibility of Reverter by Alienation with Varianty, before Issue had, without Alts. Bull nood

W. 2. has so appropriated the Land to enant in Tail, and the Heirs of his Body, at if Land be given to a Man, and the eirs of his Body, to the Use of another id his Heirs, the Limitation of the Use is bid.

C

Tenant

20.

Tenant in T. is either in T. general, or special: Tenant in T. general, is where Land is given to one and the Heirs of his Body.

Tenement, which is the only Word use in W. 2. includes not only Land, but Things issuing out of, concerning or anner to Land, or exercisable in a certain Place as Rents, Estovers, Uses, Charters, Name of Dignity, as Duke, Oc. of fuch a Place Advowsons, local Offices, as of the Marshal of England, Chamberlain of the Exchequer, Gc. And as Tenant in T. cannot bar his Mue by his Alienation of the Land it felf so neither can he bar him of a Warrant annex'd to such Estate, or of a Writ of Es ror, or Attaint.

But Things meerly Personal, as Annui ties, the Office of a Faulconer, and fud

like, can't be entail'd.

The word Heirs is absolutely necessary in all Gifts in Tail, therefore a Gift to on and Semini Suo, or exitibus, or prolibus Corpore suo, give him but an Estate L. bu the word Heirs may be supplied by Refe rence, as where Land is given to A. and the Heirs of his Body, Rem'r to B. in form Pradictà: If a Lease L is made to A Rem'r in T. to B. Rem'r to C. in forma Pra dift, the Remainder to C. is void for the Uncertainty, but if it had been limited to him in eadem forma, it had been good, for idem semper refertur proximo antecedenti. Th Words de Corpore suo, may be supplied by others. Tantamount, as de fe, or Carne fu onor Some fay, that a Gift to the Grandfather and his Heirs begotton by the Father, it ma g000

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good, and that the Grandfather's Wife is Dowable.

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Tenant in special T. is when Land is gien to two, and the Heirs of their two Bos lies, in which Case they have an Inheriance immediately, tho' they be both unnarried, or marry'd to different Persons. t has been faid, that if Land be given to and the Heirs of his Body, habendum to im and his Heirs, that he shall have a tate T. with the Fee expectant, for othernise be Habendum would be void; and it feems hat the Law is the same, where the Land is iven to one, and his Heirs, habendum to im and the Heirs of his Body, for the Feeimple given in the Premisses by the word Heirs all not be taken away by the Habendum, uns the express Purport thereof enforces such onstruction; as when Land is given to A.

y is and his Heirs Habendum to him and his Heirs,

on he have Heirs of his Body, and if he die he have Heirs of his Body, and if he die ithout Heirs of his Body, that it shall restrict. If a Man make to another two eeds of one Acre, and by the one give in T. by the other in Fee, and make Ligarry according to both, it is said that it all enure by Moieties, i. e. to pass a State in the one Moiety, with a Fee Expectant, of a Fee-Simple in the other.

A Gift of Land to A. babendum in liberal m Maritagium cum B. gives them both a ate in special T. whether B. be a Man or loman, so that he be of the Blood of the onor, and notwithstanding B. is not nather ed before the Habendum, and the Gift is er, by made expressly to B. but so the other, good he have Heirs of his Body, and if he die

Habendum cum B. yet it gives B. an imme diate Inheritance; but the Donee, that the Cause of the Gift, must (if the Thing given lie in Tenure) hold of his Donor therefore upon such Gift, if the Rem in Fee be limited to a Stranger, the Done have a State L. only, because there is no Re version in the Donor, and consequently n Tenure of him; and for this Cause, suc Estate cannot be made by Will, nor coul it be made by Cestuyque Use before the 27th H. 8. And the Donees must hold by Fealt only; therefore a Rent referved on fuch Gift is void, till after the fourth Degre for a Reservation or Proviso repugnant to t Estate which they would restrain are void; h in the Case above, the Rem'r limited on su Gift is good, for it passes with the Livery Seisin, and shall not revert to the Donor again his own Grant. If K. give Land in speci T. the Survivor shall be Tenant in Ta Apres, Oc. But if K. make a Gift Frank-marriage, and the Donee that w the Cause of the Gift die without Isla the Man shall not hold it for his Life, as should have done, if the Gift were ma by a Subject. Donees in special T, bei divorc'd causa Pracontractus, both sh hold the Land for their Lives; but Don in Frank-marriage being for divorc'd, t Donee only that was the Cause of the G shall have it; for in the first Case, the Inho tance, which includes a State L. was indi rently given to both; in the Second, the Gift made to the Stranger only in respect of his A liance to the Donor by the Marriage, which

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such Divorce is declared void. If Donees in special T. die, &c. their Issue being under 14, the Cousin of either, who can first get the Custody of him, shall be his Guardian in Socage; but the Cousins of the Donee in Frank-marriage that was the Cause of the Gift, shall alone be Guardians in Socage of the Issue.

the most restrain'd State-Tail, is that to one and his Wife, and one Heir of their Bodies, and to one of the Body of that Heir: But (a) (a) Pl. Q. If such Heir may not be rather said to take

by Way of Remainder than Descent.

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If one make a Gift in T. without faying any more, the Reversion of the Fee-Simple is in the Donor by Construction of W. 2. A Reversion is when the Residue of the Estate remains in him that made the particular Estate. A. Seised in Fee, makes a Feoffment to the Use of B. for Life, of C. in T. Remainder to his own right Heirs, the Remainder is void, for the Feoffor has an Use for his L. by Construction of Law; because, if the particular Estates determine during his Life, it must revert to him again, and confequently the Fee-Simple is also in him, for whenever the Ancestor takes a State L. and afterwards in the same Conveyance there is a Limitation to his Heirs, the Fee vests in the Ancestor; nor can a Man put the Fee in Abeiance by a Limitation to his own Heirs, as he may by a Limitation to anothers Heirs, because his own Heirs are as it were included in himself while he lives, and after his Death take only as coming in his Stead, and representing him.

him. For which Cause, if a Man make a Gift in T. or Lease L. the Remainder to his own right Heirs, or to the Heirs Male of his Body, these Remainders are void; but if one make a Feoffment to the Use of himself for L. Rem'r to the Use of the Hein Male of his Body, this is a good State T. executed in himself, for the Feoffees must be Seised to Such Uses as the Feoffor directs, who may limit them to himself as well as to a Stranger, and the Statute executes the Possession to ceftuyque Use in the same Plight, Quality and Degree in which he took the Use. And there fore, if A. infeoff B. to the Use of himfelf in T. Rem'r to the Use of B. in Fee, in which Case the Estate of A. is executed by the Statute, and that of B. is good at Common Law, yet the Estate vests in B. as 1 Remainder, for he takes the Use by Way of Remainder.

In all Cases where one makes a Feoffment without valuable Consideration to diven particular Uses, so much of the Use as he disposes not of, remains in him as his ancient Use, and the Lord by Kt.'s Service, of whom part of the Lands contained in the Feoffment was holden, that had the Prio rity of others before, hath it still; and the Heir of the Part of the Mother, or by Cufrom of Burgh Eng', or Gavelkind, shall inherit, as if no such Feoffment had been made.

At Law, if one made a Feoffment with out any Reservation, the Feoffee held of the Feoffor by the same Services by which the Poffor held over; for it would be hard in

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take the Feoffor, and his Heirs for ever, tiable perform the Services to the Lord Paramount. nd to give him nothing in the Land wherewith discharge them: And the same Constrution has been made as to Donor and Donee since W. 2. but Lessee L. or Y. shall old by Fealty only, if nothing be referved. f Tenant by Grand-Serjeanty had made a Gift in T. before 12 Ca. 2. 24. without any Refervation, the Donce should have holden y Kt.'s Service; but the Donor might have eserved a Tenure in Socage, for a special Reservation excludes the Tenure created by law. If a Husband seised of Kt.'s Service and in Right of his Wife, had made a Gift n T. the Donee should have holden of him by Fealty only, because the Husband's Rev'n was wrongful, and gain'd by Discominmince of the Wife's Estate, and the Woman as Tenant in Right to the Lord.

A. Holds B. Acre by 4d. and W. Acre by 12d. and makes a Gift in T. of both, he has but one Rev'n, and yet shall make several Avowries in respect of the several Tenures over. If a Mesne hold of his Lord by 12d. and the Tenant hold of the Mesne by 4d. and make a Gift in T. and die without Heir, the Donee shall hold of the Mesne by 12d. by the same Construction of Law by which he held of the

Tenant by 4 d. before.

But Donee in Frank-marriage holds by Fealty only till the fourth Degree is past, and afterward by the Services by which the Donor holds; for then their Issues by Ecc. Law may intermarry. A Degree of Confanguinity

24

fanguinity is canfed by the Addition of on Person to another, in the Line ascending descending. Civilians computing what D gree of Kin two Persons stand in begi with one, and afcend to the common A cestor, and then descend to the other; the Canonists descend from the common Stod till they come to each, and in the same Degn in which they are distant from the commo Stock, they reckon them distant from or another; if one be farther removed than the other, they reckon them both in the ma remote Degree. So it appears that the Civ lians put them in the second Degree, who the Canonists put in the First, Gc. 1 computing Degrees in this Case of Frank marriage, the Donor and Donees make the First. We compute by the Canon Law.

Many Cases, tho' out of the Letter of W. 2. yet being in the same Mischief, a taken by the Equity of it; for Equity in part bus rationibus paria jura desiderat, & est persed guadam ratio, qua jus scriptum interpretate & emendat. Therefore Gists in T. Male of Female are within the Statute, by Force is which Gists the Heirs of one Sex only sha inherit; but a Female can't purchase by the Name of Heir Female, unless she beat so solutely Heir; as if Land be given to A. so L. the Rem'r to the Heits Females of B. and B. have Issue a Son, and a Daughter, and the Beaute she is not their, and the W. 2. see the red an Estate T. when vested in the Donee sire being alien'd, yet it altered not the Rules's some Estate may be purchased.

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Those that inherit by Force of a Gift in T. Male, (whether fuch Estate be made by Act executed, or by Devise,) must convey the Descent to themselves wholly by Heirs Male, fo d converso, where a Gift is made in T. Female; but the Son of a Female may have an Appeal for the Death of his Ancefor, tho' the Mother could not have it, so may the Uncle being Heir on the Part of the Mother, for Magna Charta 34, only disables Mother, for Magna Charta 34, only dilables and the Women from bringing an Appeal as Heirs, and extends not to their Issue: Sed Q. Is Land to the given in T. Male, Rein'r in T. Female, who and Donee have issue a Daughter, who hath issue a Son, this Son is not inheritable to either estate T. therefore it is safest to limit the Rem'r in T. general. But if A. have the Rem'r in T. general. But if A. have the Rem'r in T. general. But if A. have the Rem'r in T. general. But if A. have the Rem'r in T. general. But if A. have the set of the Son die, and a Rem'r is limited to the Heirs Females of A. the Daughter, and the set of the Heirs Females of A. the Daughter shall ake the Rem'r as a Purchaser. A Rem'r in T. is given to B's next Heir Male, he has Issue two Daughters, they have Issue two Sons, sale the Father and Daughters die, some say that neither of the Sons take, for the Uncertainty; some say that the Son of the Eldest only, because worthiest; others that both, be about the some say that the Son of the Eldest only, because worthiest; others that both, be about the some say that the Son of the Eldest only, because worthiest; others that both, be about the some say that the Son of the Eldest only, because worthiest; others that both, be about the some say the say the same a state in special T. Rem'r presently. A Gift to two Husbands and the say gives them a joint Estate for L. and say the same say the s Women from bringing an Appeal as Heirs,

one Moiety, and the other Husband and his Wife in the other Moiety: Which is the most natural Construction. But a Gift to two Men and one Woman, and the Heirs of their Bodies, gives each of the three a joint Estan for L. and several Inheritances; for they can't have one entire Inheritance, because then cannot be one Heir of the Body of all three,

26.

A Gift to a Man and his Wife, and to the Heirs of the Body of the Husband be gotten, makes him Tenant in general 7 her Ten't L. A Gift to Husband and Wife, and to the Heirs of the Husband of that he shall beget on her Body, gives him that spec. T. her a State L. so e converso, when Land is given to them Two, and to the Hein of the Body of the Wife in general, or to the Heirs of her Body begotten by the Man But a Gift to them two, and the Heirs tha he shall beget on her, gives them both special T. for the word Heirs, which alone is operative, is limited to one no more than the other. A Gift to them two, and the new Heirs of the Body of the Survivor, creates I are several, but it shall not well till there have general, but it shall not vest, till there b 2 Survivor. A Gift to one and the Hein of his Body, is as good as a Gift to him and his Heirs of his Body. A Gift to A. and his Heirs on B.'s Body begotten, gives A. a special real.

T. B. nothing, and tho' 'tis not said who will hall beget them, yet it must be intended that they are to be begotten by the Dones. The heart of the Body of his Father, this is a good Entail, for Heirs of the Body of his Father, is a good Name of Body of his Father, is a good Name of Body of his Father, is a good Name of Body of his Father, is a good Name of Body of his Father, is a good Name of Body of his Father, is a good Name of Body of his Father, is a good Name of Body of his Father, is a good Name of Body of his Father, is a good Name of Body of his Father, is a good Name of Body of his Father, is a good Name of Body of his Father, is a good Name of Body of his Father, is a good Name of Body of his Father, is a good Name of Body of his Father, is a good Name of Body of his Father is a good Name of Body of his Fa

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urchase. A Gift to Mand, and to the eirs of her deceafed Husband on her Body gotten, (the having a Son and a Daughr by him,) gives her a State for L. and the on a State in T. and if the Son die without fue, his Sister shall recover per formam oni, and name herself Sister and Heir to im in the Writ, because she can have no ther, and yet the Land did not properly escend from him; but she takes, as he and the fame Case, if the Heirs of the Body band of the Husband had been named after the him Habend, they had taken nothing; for they when ould not take a present Estate in Possession, bewhen ould not take a present Estate in Possession, beHein ause not named before the Habend. nor by way
to the sa Rem'r, because there is no mention of any
Man state, but only of such which is to take effect
to the sate resently. One Parcener in Fee gives her
tothe sat to her Sister, and to the Heirs of the
salone lody of her Father, the Donee has a State
that I in the one Moiety of her Sister's Part,
d the nd an Estate for L. in the other, for she
test annot take an Inheritance in the Whole,
ere by the Name of Heir of the Body of the FaHein her, because she is his Heir but in Part.
In an A Gift to A. and his Heirs of the Body of
and his Father gives him a Fee, for the Deed expecta resty gives the Land to him and his Heirs;
who me this cannot be a State in T. for those that
ends where such Estate, must claim it as Heirs of
the Body of him from whom they claim as
made Heirs, therefore it must be a Fee.

A Gift to A. and his Heirs Males, creates
irs of Fee-Simple, for 'tis not limited from what
the Body the Heir must issue, which to make a
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State T. is necessary to be done by expr

Words, or others equipollent.

Such Words in a Will, give a State T. Male; but K.'s grant with fuch Wor is void, for the King is deceived; and t Parliament alone can make a new State Inheritance. But Arms in which one has Fee, descend to the Heirs Males only, s they only are able to bear them: But Females may in a Losenge, or under Curtain, express of what Family they by the Arms belonging to it, and the Hi band may quarter them with his own. T Dutchy of Lancaster was entailed to Ed. and his Heirs, Kings of England; Hen granted to J. T. that he and his Hei Lords of the Mannor of Life, ex nunc Do & Barones de Liste, Nobiles, & Proceres Re ni habeantur; by this J. T. had a qualifi Fee in the Dignity; So where a Grant w made to A. and his Heirs, Lords of the Ma nor of D. In Gift of Gavelkind Land A: and his eldest Heirs, or of other Land to A and the eldelt Heirs Females of b. Body, the Law rejects the word Eldest.

#### Of Ten't in Tail after Possibility Iffue extinct.

because the is

Wife in special T and one of them district without Issue, to that no Issue be also without Issue, to that no Issue be also which can inherit by Force of the T. the furrism

urviving Donee is Ten't in T. Apres, Oc. when a Gift is made to a Man and his feirs which he shall beget on the Body of is Wife, and the dies without Iffue, the Justand becomes Ten't in T. Apres, Oc.

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Such Ten't has 8 Qualities, that Ten't L. as not. 1. He shall be dispunishable for Waste. 2. Not compellable to attorn. 3. He hall not have Aid of him in Rev'n. 4. On is Alienation no consimili Casu lies. er his Death, no Writ of Intrusion. 6. He nay join the Mise in a Writ of Right in a becial Manner. 7. In a Pracipe by him, e shall not name himself Ten't L. 8. In Pracipe against him, he shall not be named arely Ten't L. But none of these Privieges can be transferred to his Assignee.

In four Respects his Estate has the same Qualities with a State L. 1. It may be orfeited by a Feoffment, &c. made by Mar im. 2. It may be drowned by a not tate of Inheritance descending on him.

Land It may be exchanged with a State L.

of h. He in Rev'n or Rem'r shall be received in Default of such Ten't.

While both Donees are alive, tho' never

While both Donees are alive, tho' never oold, they can't be Ten'ts in T. Apres,

race, and have thus c'ar Land is given to A and his Wife for Vid. Cro. heir L. the Rein'r to their first Issue Male 315.

Id an a T. Rem'r to them in E. they having no 383, 387.

In die succuted, for since the Rein'r limited to the sie de state Male, ean't be in Esse before his Birth, all here is nothing to divide their Estate L. from the Inheritance, which for the Time drowns the ivin

23.

Estate L. The Birth of a Son makes them Ten'ts L. the Rem'r to the Son in T. the Rem'r to them in special T. But if the Husband die, having no other Islue, and then the Son die, the Wife shall have the Privileges of Ten't in T. Apres, &c. In Re spect of her Rem'r of Such Estate, but she still continues Ten't L. for such Rem'r cann drown the State L. which is as great Estate.

When Land is given to Husband and Wife in special T. and then they are divorced, causa Pracontrattus or Consanguinitati they become bare Ten'ts L. for the Act of God alone, viz. dying without Iffue, a

make Ten't in T. Apres.

If Land be given to A. and his Wife, an to the Heirs of the Body of A. Rem'r t them both in special T. such Rem'r is void for it can't take effect till A. dies withou Issue; and when he does, it is impossible that he should have any Heir of the Bod of himself and his Wife.

### Of Ten't by Curtefy.

IF a Man marry a Woman seised of a Sm of Inheritance, and have Issue of he 29. born alive, which possibly might inherit Heir to her of such Estate, he shall hold the Land by Curtefy of England during h Life.

The Wife must be actually seised, but ! Vid. Supra. actual Seisin cannot be had, Seisin in La is sufficient; as if the Wife seised of Ren or of an Advowson, die before the Rent b

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mes due, or the Church void, the Hufand shall be Ten't by Curtefy: so if the Vife be seised of a Seigniory suspended for ears only, but not if it were suspended r a State of Freehold; but in all Cases, she ust have an Inheritance, and tho' her ate being in T. determine for want of sue, yet he shall be Ten't by Curtesy. But if Woman make a Gift in T. referving a Rent her and her Heirs, take Husband and have fue, and Donee die without Issue, and life also die, he can't be Ten't by Curteof this Rent. For the State T. being deterined, the Rent reserved upon it must of conseence fail. But he shall be Ten't by Curfy of a Rent granted in T. to his Wife by he that has a Fee in it, tho' the Wife die ithout Issue, because the Rent remains. ne can't have a Right, Title, Use, Rev'n Rem'r expectant on a Freehold, as Ten't Curtely, or Dower. A Woman Ten't in makes a Feoffment, and takes back a ate in Fee, marries and dies, the Issue in Formedon shall recover against the Husand, by Force of the State T. and confeently defeat his Title of being Ten't by Curtewhich depending on the Estate whereof the life was seised during the Coverture, must fail ben that is defeated.

The Issue which shall entitle a Man to Ten't by Curtesy, must be born in the ife of the Wife, therefore it is not enough at it be rip'd out of her Womb after her eath, and it must be born alive, which Ren Crime Could by Motion, Ge. as well as V Crying, and it must have humane Shape.

But

But it is not requifite that the Isfue be all when the Land descends or comes to Woman: For if the be diss'ed, have If and die, the Husband shall enter; fo the Issue be born and die before the La descends to the Wife. By the Custom Gavelkind, one may be Ten't by Cure

V.

h

without having any Issue, Husband is call Ten't by Curtefy initiate, and he alo without his Wife, shall do and receive H mage, and is fole Ten't to the Lord's Avo ry, and if he make a Feoffment, his Feof shall hold during his Life, for such Fe ment cannot be a Forfeiture, because Feoffor was seried of the Inheritance; be if he enter for Breach of a Condition and ed to such Feoffment, and the Wife d he shall not be Ten't by Curtesy, for and Title to the Ten'cy by Curtesy was extra the by the Feoffment; as when the Lord discharge has Ten't, and makes such Feoffment, that is a Release in Lam, and shall extinguish this Seigniory as much as a Release in Deed, a not seed to the contract that the second seed to the contract that the contract the second seed to the contract that the second seed to the contract that the contract the second seed to the contract that the second seed to th Seigniory as much as a Release in Deed, a not the Re-entry shall not revive it, for the Condition was annexed to the Feoffme she and not to the Release, and the Re-entry she for Breach of the Condition shall not review fuch Things as were absolutely destroyed the Feoffment. If one marry the Kon Niese by Licence, he shall be Ten't by Contest of Land descended to her, for she infranchised during the Coverture. But Ka's Villeins Wise shall not be endowed for he still remains the Ka's Villein. Land descend to a Wise that is an Ide on

et on Office found the Kijshall have the lustody of the Land, and after the Wife's leath, the Husband shall not be Ten't by Curtefy. Sed Q for the Fee and Freehold were in be Wife, and the Wife of an Ideot shall have lower. But one may be Ten't by Curtefy f a Castle built for the Defence of the lealin, or of a House, that is Caput Buroie, or of a Common fans Nombre, tho' a Voinan shall not be endowed of such hings.

The Ten'cy by Curtefy is confummate.

y the Wife's Death.

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# habitation of Ten't in Dower. Sty and

Ten't in Dower.

Where a Man is seised of such an Inheritance, that the Issue which he may for ave by his Wise, may by any Possibility extra the ritance, that the Issue which he may herit, as Heir to her of such Estate, she hall be endow'd of the third Part in Several, a list is Death, whether she had Issue by him of the sol, a not.

Ten't in Dower is much favour'd in Law: Issue he shall be free from Toll; nor shall she he shall be free from Toll; nor shall she distreined for Debt due to K. by her husband.

The Wise of an Alien, or one attainted of Treason, or K.'s Villein, shall not have by the sainted of Pramunire or Heresy, or of a sommon Persons Villein, shall be endowed. So shall a Niese being married to a Free-man, and the Wise of one attainted of Fe-man, and the Wise of one attainted of Fe-man attainted of Fe-man

E. 6 cap. 11. The Husbands Seisin in Landis sufficient to give the Wife Title

Dower.

The Rule, Dos de dote peti non debet, is thu to be understood, where the Grandfather die feised of 3 Acres, and the Father enters and endows the Grandfather's Wife of one Acre and dies, the Father's Wife small be en dowed only of the 3d Part of the other tw Acres; for inasmuch as the Grandfathe died feis'd, in judgment of Law there wa no Mesne Seism betwixt him and his Wife But if the Father had claimed the fail 3 Acres by Purchase from the Grandfather his Wife should, after the Death of the Grandfather's Wife, have been endowed of the 3d Part of that Acre, whereof the Grandfather's Wife was endowed; or in the first Case, if the Son, after the Death of Grandfather and Father, had endow'd his Mother first, and then the Grandmother had recover'd a 3d Part against her, the Mother after her Death might have enter again; for her Estate in the Part so recovered, was defeated only for the Grandmothen Life.

The Husband's Seism for an instant on ly, gives the Wise no Title of Dower, at the Seism of Cesturque Use before the 27th of H. 8. making a Feosiment; or of the Conuse of a Fine that grants and renders to the Conusor.

If Husband exchange Land, she may chuse to be endowed either of the Land given or taken in Exchange.

Sha

She shall not be endowed of a Castle for e Defence of the Realm, nor of a House at is caput Baronia or Comitatus. This is to 3 Lev. 404. understood of Baronies by Tenure, which are wextinct, and were anciently Castles of Dence.

If Ten't T. make a Feoffment, and take ck a State in T. and marry, and die, the lue is remitted, and the Wife not Dowle. But if the demand Dower, the Ten't ust not plead nunques Seisie que Dower, but

e special Matter.

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An Alien, or Infidel is not dowable, cept the Queen, being an Alien; and it as adjudged that the Wife of Edmond, the First's Brother, tho' she was an Ali-, should be endowed of the 3d Part of his inds in Fee.

Of Things entire, she shall be endow'd in pecial Manner; for Example, the shall ve the 3d Toll-Dish of a Mill, the 3d ays Work of a Villein, the 3d Part of the ofits of a Fair, or the Profits of the Office Goaler, the 3d Fish taken in a Pischary, 3d Presentation, every 3d Tythe eaf, &c. for what she shall have must be tertain'd, and she shall not be endowed a 3d Part in common with the Heir.

She shall not be endowed of Rent referd on a Lease L. but of a Rent reserved on wift T. the shall, for such Rent is an Inntance: If Lessor Y. marry, and die, the ife shall have the 3d Part of the Rent reved, and of the (a) Rev'n.

She shall not have Dower of common Br. Dower Nember en grofs, nor of an Annuity, El. 564.

(a) Vid.

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nor of Rent whereof the Freehold was ful pended before, and during the Coverture But the shall be endow'd of Rent extin guish'd by the Husband's Release after the Coverture.

Tho' the Heir improve or impair the Va lue of the Land, the shall have her 3d Par according to the Value at the Time of the

Assignment.

(fall Sponte (a) virum Mulier fugiens, & adulte (a)W.2.34. Dote Sua careat, nifi Sponsi sponte retracta

Divorce à Vinculo bars Dower, divorce

Mensa & Thore only does not.

A Wife endow'd by Metes and Bound according to common Right, shall avoids a Charges made after her Title; one endowe in against common Right shall not; But it wife of Ten't in Common, and in some Cases the Wife of one Sole seised, shall not; be endow'd by Metes and Bounds; as luc be endow'd by Metes and Bounds; as he Husband seised in Fee inseoff 8 Persons, and die, and the Wise bring a Writ of Down against them all, and two of them constate the Action, and the other six descend to Issue, she shall recover the third Part of two endowners of the Land in 8 Parts to be divided and when she has Judgment against the other six, she shall have a Third of six Parts of the same Land in eight Parts to be dopy vided. Vided.

She can't enter into her Dower best her its assigned to her. Magna Charia gave her is Forty Days, Old Law gave her a Yeart le continue in her Husband's House after he Deat

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ath, but the loft both by marrying in.

The Statute of Merton gives her Damages m the Death of her Husband; but they all be recovered only in Writ of Dower, de nihil habet; not in Writ of Right of ower, for Damages are not recoverable in Ostium Ecclesia, &c. because she may eninto fuch Dower without Suit: The sband also must die seised of the Freeld and Inheritance: and the must not ay herfelf: She must be able to processor a Demand of the Dower, for tone mps Prist is a good Plea for the Heir, to could be a in a Writ of Aiel, &c. for there the down in that pleads them, are Peremptory against 1 Syd. 252. in the Pleas in Abatement being found against 1 Lev. 163. in Par m. This Statute extends to Dower of bed oppholds, but Damages are not given here Dower is affigned in Chancery, nor before the Heir or Feosfee affign Dower; ave by the must recover without it. Husband seised frer I Fee, grants a Rent, makes a Feosfinent, Deal takes ove a Demand of the Dower, for tout Deat

takes back a State T. and dies, she sum sing that he died seised, prays her Damage she shall hold the Land charg'd, for by he Prayer, she accepts herself Dowable of t

2d Estate.

Let the Husband be never fo young, if the be past the Age of 9 Years at Death, the shall be endowed, tho' alien'd the Land before she came to the Age, for the Possibility which the La gives her of having Title of Dower, if arrive at that Age, shall not be defeated the Act of the Husband. And if he all his Lands, and then she be disabled by A tainder and pardoned, she shall have Do er. For tho' the Title of Dower be not confin mate till the Husband's Death, yet by the Ma riage it so vested in the Wife, that no Act of Husband can bar it, nor is it forfeited tot K. by the Attainder, and tho' she be disall to claim it during the Attainder, yet when it is removed, she may claim it as before. But the Husband of an Alien sell his Land and then she be made a Denizen, she sh not be endow'd: For an Alien has no m Title of Dower than if she were never mari at all, and the Husband's Alienation takes thing from her which would certainly have con to her by the natural Course of Things, for only had a Possibility of gaining such Title K.'s voluntary Act. But in the same Cal if the were naturalized, the should ha had her Dower; because, thereby she became natural Subject ab initio.

On the Issue, quod nunquam suere Leguin Matrimonio copulati, the Bishop ought rt

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rtify that they were Legitimo Marrimonio pulati, tho' the Woman were under 12, the Man under 14, or tho' they might we been divorced a Vinculo, for it was egitimum quoad dotem. But it is faid, that ich Wife who might have been divorced' Vinculo, shall not have an Appeal of the eath of her Husband, in favorem Vita; et an Adultress that elopes shall have an ppeal, tho' she shall not have (a) Dower, (a) W.2.34 r the Statute that takes away the one entions not the other; fo shall the Wife one attainted of Treason, for ber Husband, o attainted, is still her Husband.

A Wife can't have Dower till her Hus-

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nd's natural Death.
As a Woman thall have a 3d Part of the heband's Land for Her Dower by Comon Law, to by Cultom of some Places the island have half, or all, on She shall have in the left of Gavelkind Lands while the remains But ple, and without Child; and such a Cuand om may be in Upland Towns as well as the urghs, but it is fafer to lay it in a Manager if the Truth will be a first and Culton.

om or, if the Truth will bear it: And Custom ay abridge, as well as inlarge Dower.

Downent, ad oftum Ecclesse, is where we of full Age; when he comes to the hurch Door to be married, after Assiance ighted, endows his Wise of all his Land, half, or less, and assigns the Certainty of half, or less, and assigns the Certainty of half have. In this Case she may ten after his Death, without other Assignment. Such Downent can't be made adding Casti Messagi. Oc. it must be made egin ium Castri, Messingii, &c. it must be made ad ter Marriage, therefore it is good with-

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out Deed, which a Man can't make to hi Wife; and such Dowments are favoured, because they supply a necessary Defect of Law, by reds cing the Wife's Title to a 3d of the Husband Land to some known certain Part, which no go neral Rules can do. Anciently fuch Don ment was good for no more than a 3d Pan but now it may be made for the whole.

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Where the Writ demands Land, Rent, o other Things in certain, the Dem't afte Judgment may enter, or distrein, before an Seisin delivered by the Sheriff; but i Dower, where the Writ demands nothing in certain, the Dem't can do neither, il after Execution; and tho' the Writ deman the 3d Part of 6d. Rent, or the 3d Part a Moiety; in which Cases, the Sheriff or reduce it to no more Certainty than was be fore; yet he must deliver Execution, the the Solemnity thereof may give the great Strength to the Judgment so uncertainly de vered.

As Dower may be affigned by the Sheri in Pursuance of K.'s Writ, so may it affigned by the Ten't of the Land by Co fent, and to make fuch Assignment perfet these Rules must be observed. 1. It mu be certain. 2. Of Land whereof the Dowable, or Rent out of it, for if it l out of other Land, it is no bar of her Don er. 3. It must be without Condition Limitation. 4. It must be made by for Ten't of the Land. If a Jointenant affe to the Wife a 3d Part of the Land for h Dower, this shall bind his Companions ath and such Assignment by a Diss'or sha arer bin

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bind the Diss'ee; but if they assign a Rent, t shall bind themselves only, for they were not compellable thereunto. A Man infeoffs everal with Warranty, his Heir endows he Wife of Parcel of Land in full Satisfation of all the Dower, which she ought to ave in the Land of all the Feoffees; if the ring her Writ of Dower against the Feofees, the Heir coming in as Vouchee, may lead this Assignment in Bar, but one Feofee can't plead fuch Assignment made by nother, for a Man can take no Benefit of n Act done between Strangers; but in the irst Case, the Heir is bound by the Waranty of his Ancestor, to secure the Land to he Feoffees. If a Woman recover Dower gainst a Diss'or coming to the Land by Lovin, to which the was Privy, the Difs'ee hall avoid it; so if Diss'or's Endowment be rejudicial to the Diss'ee, as when the elder on Diffeises the Younger, who was intoff'd by the Father with Warranty, and ndows the Wife, the younger Son shall void it, for else he should lose his War-anty, by Force whereof if he be in Possession, nd the Wife demand Dower against him, he pall recover in Value against his elder Brother: flignment by Guardian in Socage is void. ut Assignment by Guardian in Chivalry vas good, for a Writ of Dower lay against im: The Heir himself, before the Entry for f Guardian in Chivalry, might affign

Dowment ex affensu Patris, is when the ather is feised, and his Son and Heir aparent, being marry'd, endows his Wife of D 2

a certain Parcel of his Father's Land: In this Cafe the may enter after the Son's Death, tho' the Father be still alive, or the may have a Writ of Dower for such Dow. ment.

But if the Father, at the Time of fuch Dowment, had been feifed but of a Rev'n on a Freehold, the Dowment had been word, for if the Son himfelf had been feifel thereof, be could not have endowed his Wife

of it.

It is the Son that doth endow, and the Father doth but affent; but the Dowment is good, the' the Son be under Age when it is made; but he must be an Heir Apparent, and fuch a one as always must continue for Therefore such Dowment can't be ex affens Eratris, or of Burgh Eng', or Gavelkund Land; but Downent ex affensu Matris is good. Some fay, that if the Father be attainted after such Dowment, she toses her Dower, for her Husband continues not Heir.

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The Father's Assent to such Dowment ought to be by Deed; because the Land is charg'd thereby with a future Freehold. To a Deed, Ten Things are necessary: 1. Wilting 2. Parchment or Paper. 3. A Person able to contract. 4. By a sufficient Name 5. A Person able to be contracted with 6, By a sufficient Name. 7. A Thing to be contracted for. 8. Apt Words. 9. Seal-

ing. 10. Delivery.

To the Delivery of a Deed to the Party, Words are not necessary; therefore if I deliver a Deed to the Party as an Escrow, to be in my

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ng to Sealmy Deed on certain Conditions, this is an biolute Delivery of it; for it would create he greatest Confusion, if the Words of a Deed ntended to be framed by Advice, and executed ich fuch Solemnity, should be controll'd by onse Words not contained in it, the exact Form f which is fo enfily forgot or miftaken. But I hay deliver a Deed to a Stranger, as an Efrow, orc. for the Delivery thereof to a tranger, without Words, is of no Force, nd therefore the same Words which make the Delivery effectual, may shew how far it shall e fo. As a Deed may be delivered to the arry without any Words, fo may it be elivered by Words only, without any 8, 1,101

She that enters and agrees to fuch Dower dofium Eoclefia, or ex affensu, is concluded: claim her Dower at Common Law, but he may refuse such Dower, and claim het

Power at Common Law.

A Jointute was no Bar of Dower before 7 H. 8. 10. for a Right or Title to a Freeold can't be barr'd by Acceptance of a colteral Satisfaction. But by that Statute it a Bar of Dower, if it be made according to he Form of it; and as to that, these Things te to be observed: 1. It must be by the first imitation to take effect in Possession, (by a inveyance at Law,) or in Profit, (by Way of executed by the Statute,) presently after e Husband's Death. Therefore if the Li-Party, litation be to the Husband for L. after to deli-deli-to be in be no Jointure within the Statute, to in Dower, tho' A, die during the Cover-D 3 ture,

ture, for quod ab initio non valet, tractu Temporis non Convalescet. 2. It must be an Estate for her L. at least; but it may be limited if A Rep. 3. a. continue so long as she shall remain Sole, or Shall do, or forbear to do, any Act in her on Power. 3. It must be expressed or averred to be in Satisfaction of her whole Dower A Will can't be averred to be in Satisfaction of her Dower, unless it be so expressed in the Will. 4. The Estate of the Land mus be in her, not in Trustees for her. 5.1 may be made before or after Marriage; bu if it be made after, the Wife may claim Dower, and waive her Jointure, tho' h join'd with her Husband in levying Fire of it. It may be limited to her alon or jointly with her Husband. 37.

A Jointure is not forseited by the Huband's Attainder of Treason, but Dower be Common Law, or ad ostium Ecclesia, of ex assensu, or by Custom, are barr'd fuch Attainder, so long as it stands

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A Jointure, or Dowment, ad offium Ear fia, or ex assensu, made to one under the Age of 9 Years, are good, because they a made by Assent.

Vid. Supra. or ex affensu, may enter into the La affigned, after her Husband's Death, without any Assignment.

Whereof her Husband was Jointenant, be of Land whereof he was Ten't in Common the shall.

If Ten't T. endow his Wife ad oftium Ecclesia, the Issue may enter upon her after his Death: And if Ten't in Fee within Age nake such Dowment, his Heir may enter upon her: But Dowment ex assensu Patris s good, tho' the Husband be within Age,

he Father being then of full Age.

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A Woman Guardian in Socage bringing a Writ of Dower against Guardian by Kr.'s ervice (before 12 Ca. 2.24.) (hould, upon his Pleading the whole Matter, have been adudged to endow herself de la pluis Beale, e, the Fairest of the Socage Land. But uch Dowment could not be without Judghent: If the Socage Land were not suffiient for her whole Dower, she should reain for Part, and recover against the Guarian in Chivalry for the other Part. After udgment as aforefaid, whether in the K.'s Court, or the Lords, the Wife should in the refence of her Neighbours, have endowed erself of the Best of the Land, which she eld as Guardian in Socage, by Metes, to old it for L.

Guardian in Chivalry was possessed of the Vard of the Body before Seisure, but not the Land before Entry. Writ of Dower ay against K.'s Grantee of a Ward; it also by against the Executors of the Guardian; or ne of them only, if he alone took the Pross. If a Man were possessed of a Ward in is Wife's Right, the Writ of Dower lay

gainst the Husband only.

Guardian in Chivalry could not plead detainment of Charters in Bar of Dower, ut he might plead Detainment of the Body

of the Heir, because the Marriage of the Heir belong'd to him. He might assign Dower out of the Land in Ward, or give a Rent in liet of it. It he had assigned too much, the Heir a Common Law might have a Writ of Almeasurement; if the Heir had assigned to much, before the Guardian entered, W. 2 gave the Guardian this Writ, and the Heir himself might have the same when he cam to Age, some say, within Age; but the Guardian's Assignee after such Endowment could not have it, because it was a Chose in Action

This Writ also lay on an Assignment of Dower in Chancery to the Widow of K

Ten't in Capite.

Whenever a Wife is seised of such a State in Tenements, that the Issue which the Man has by Her may possibly inher the same as Heir to her, he shall be Ten'th Curtesy; and if the Man have Issue inhere table by her, and then she be attained yet the Title of being Ten't by Curtesy we sted in the Husband, shall not be lost them by; but it she be attained before Issue had, he can have no Title at all to be Ten't by Curtesy.

Estate in Tenements, that it may possibly hap pen that the Wise may have Issue by him, and that the same Issue may possibly inherit in same Estate as Heir to him, she shall have Dower, tho' the Wise be never so old, of the Husband never so young. But 2d Wise of Donee in special T. shall not be endowed

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After W. 2. if the Ten't T. were attainted felony, the Issue should inherit, and yet he Wife lost her Dower, for the was not clieved by the Statute; and a Wife that opes loses her Dower, by the 34th Chapt that Statute, and yet her Issue shall inerit.

The Common Law punish'd one attainted for Treason, or Felony: 1. With Loss of ife, by Hanging. 2. Loss of his Wise's lower, as well against the Husband's Feofee, as the Lord by Escheat; (but at this lay the Husband's Attainder of Felony suses no Loss of his Wise's Dower.) 3. Coraption of Blood, Loss of Gentility, &c... Forseiture of Land, Goods, and Chatles. But this extends not to Peric Largeny, ander 12 d.

### Of Ten't for Term of Life.

Enant L. is he to whom Tenements are Lett for Term of his L. or for Term of nother's Life; but in common Speech, the irst is call'd Ten't for Term of his Life, . he 2d is called Ten't for Term of another: lan's Life. If Lessee pur autre Vie, or Grane of Ten't in Dower, or by Curtely, or of. effee for his own Life die, living cesturque fe, he that first enters is called an Occupant, . nd should at Law hold the Land, living fugue Vie, and be punish'd for Waste, and . bject to Payment of the Rent referred. ut there never could be an Occupant i gainst the K. nor of a Thing lying in frant, for every Occupant must not only D 5

averr the Life of cestuyque Vie, but must all claim by a que Estate; but this cannot be please ed of Things that lie in Grant, in which Man can plead that he has the Estate of am ther, without shewing a Writing b which claims it. But the Heir of Ten't pur anin Fie alone shall have the Land, as a special Occupant, where the Lease is to a Man an his Heirs for another's Life, or where Ten pur autre Vie grants over his Estate to and ther and his Heirs; and now by 29 Ca. 2.1 Such Estate shall be chargeable in the Hands the Hetr, if it come to him by Juch Speci Occupancy, as Affeis by Descent; else it sha go to the Executors, and be Affets in the Hands.

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Lessee L. or Y. shall have reasonable Plough-bote, Hey-bote, and House-box without Provision of the Party, and he ma take them on the Land demised withou any Affignment, unless he be specially in

ftrained.

If a Lease be made to a Man for his Life and the Lives of A, and B. he hath but of Freehold with several Limitations, which higher than a Lease for his own Life only but when there are several States in seven Persons, an Estate for ones own Life is high er than for anothers. Therefore Ten't may furrender to him in Rem'r for Life and if he infeoff him, it enures by way Surrender, and is no Forfeiture. If Left L. lease to his Lessor for Lessors L. or Feme Leffee L. and her Husband by Inde ture make a Lease to the Lessor for the Hul ma the band's Life, such Leases can't be Forfe turd

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ures, because the Lessor is privy to them; or Surrenders, because the Lessees give not up their whole Estate; and if the first lessor marry, and die, during the Life of Lessee in the first Case, or of the Husband n the Second, his Wife shall not be endowd, and if a Rent be referv'd on fuch Leafe nade to the Lessor, the Reservation is good. f a Woman recover Dower against the Lessee L. of the Husband's Heir, or against Widow of her Husband's Feoffee being Ten't in Dower, and die, they shall have he Land again. A. and B. Jointenants, A. for L. B. in Fee, join in a Lease L. A. has Rev'n, and shall join in an Action of Waste. So if Lessor and Lessee L. join in uch Lease, it is said they shall join in an Action of Waste, and that the one shall reover the Place wasted, and the other the Damages.

A Lease made to one durante Viduitate, or dum sola fuerit, or quam din se bene gesserit, or so long as Leffee shall pay 10 l. per Annum. or till he be promoted to a Benefice, or for any other uncertain Time, if it be of Lands, and Livery be made, gives a State L. determinable, but if it be of Things that lie in Grant, it gives a State L. by delivery of the Deed. And in Count, or Plea, the Leffee shall alledge the Lease, and conclude, that by Force thereof he was feifed generally for Term of his Life. If a Mannor worth 201. per Annum, be Lett to a Man till 100 l. be paid, the Leslee has a State L. if Livery be made, determinable upon the Levying of the 100 l. If a Rent Charge of 20 l. per

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Annum be granted till 100 l. be paid, the Grantee has a State for five Years, for it certain, that then it will be paid. Ye some uncertain Estates are neither for L T. or W. As where Land is deviled to Executors till fuch Debts are paid, for if this were a State L. the Debts by the Executori Death might remain unpaid: So when Guardian by Kr.'s Service held the Heir Land for the fingle Value of the Marriage (in which Case he had the Land but in Natur of a Distress;) or where such Guardian held over for the double Value, or where on has Land delivered in Execution for a Debt which Estates are created by Parliament, and they should be construed to be Estates L. the might determine before the Money, for the Sa tisfaction whereof they were given, could be lewied.

If a Man grant Lands, or Rev'ns, On (due Ceremonies requisite in Law being performed,) or declare an Uie, and limit m Estate, the Grantee or Lessee has a State L K. grants to an Officer at Will, a Rent for the Exercise of his Office for Term of his L the Grantee has a State in the Rent for Term of Life, determinable at Will confequentially, because it must determine with the Office, but K. can't take away the Rent, unless he remove him from bis Office. A Lease L. made by Tent in Fee, shall be construed for L. of the Lesice, such Lease by Ten't T. shall be construed for L. of the Lessor, for if it were construed to be for L. of the Lessee, it would cause a Discontinuance, and the Law more respects

spects a less Estate by Right, than a great-

by Wrong.

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He that has a State L. or a greater, has a rechold, but none that has a less Estate. offor is properly he that infeoffs another Fee: Donor is he that makes a Gift in T.

esfor he that Leases for L. Y. or W.

Whoever is disabled to purchase, is disaed to infeoff; but Persons attainted of Trean, Felony, or Pramunire, or guilty of fuchffences, if Attainders ensue, may purale, (for the Benefit of others,) but their offments are voidable. An Ideot, Madan, Infant, Feme Covert, one under Dufs, or born Deaf, Dumb, and Blind. ay purchase, and infeoff others, but both eir Purchates and Feoffments are voidae; an Heretick convict, Leper removed Writ, one Deaf, Dumb, or Blind, if has Understanding, and can express it Signs, Villeins of any, but the K. may feoff, and their Feoffments shall never be te L goided.

At Common Law a Man could not make is L. Feofiment of Parcel to hold of the Chief. ferm ord, for he could not divide the Lord of his stally, hich was entire, and barr the Lord of his set K, istress for the whole Services in any Part the Land, but he might make a Feoff-Tent ent of the whole to hold of the Lord, or Les Seoffment of Parcel to hold of himself; ord, for he could not divide the Seigniory Les Feoffment of Parcel to hold of himself; aftru it such Feoffment of Parcel made without come Lord's Affent after Magna Charta 32. would shich provided, and nullus liber homo det de more tero amplius alicui de terra sua, quam ut de respects lus terra sua posset sufficienter sieri Domino feedi 43-

2 Inft. 66.

feodi servitium ei debitum quod pertinet ad se dum illud,) was holden to be against the sai Statute, and the Heir of the Feoffor might avoid it, unless the Services due to the Lumight be sufficiently performed of the Residuent maining in the Hand of the Feoffor. And this Statute, K. took a Fine of his Ten'the Alienation, and some say that he might have seised the Land as sorseited.

At this Day, by the Statute of quia em tores, the Ten't may alien Part to hold the Lord, and the Feoffee shall hold of his pro particula; but this Act took not awa K's Fine for Alienation, because he we not mention'd in it: By the 1 Ed. 3. 12.1 was provided, That the Alienation of K. Ten't in Chief should be no Forseiture, as that K. should only have a Fine; and 12 Ca. 2. 24. all Fines for Alienations of taken away, except such as are due by Custom particular Mannors.

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### Of Ten't for Term of Years.

T Enant ? is he to whom a Lease for certain Term of Years is made, who

enter'd by Force of fuch Leafe.

By 32 H. 8. 28. Ten't in Tail, Husha and Wife seised jointly of a State of Inha tance, or in the Wise's Right, any Perseised in the Right of his Church, exceparsons or Vicars, may by Lease for Years, or 3 Lives, bind the Issues in (but not him in Rev'n or Rem'r,) the Heat or Successors respectively; but these This

nust be observed in the making of such

1. It must be by Indenture.

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2. It must, by the Words of the Statute, be nade to begin from the Day of the making hereof, or it may be made to begin from he making, by an equitable Construction; but a Lease L. be made to begin from the Day of he making, the (a) Livery of Seisin must be Ja. 458. ade after the Day on which the Deed was devered, for if it were made on the same Day, would be void, because a Freehold cannot pass.

Futuro; for which Cause, a Grant for L. of Yel. 131.

Thing lying in Grant, habendum a die confectionis, is void; but such Lease L. of Land good, if Livery be made after the Day on hich the Deed was delivered, because it takes of effect by the Delivery of the Deed, but by ivery of Seisin; but a Grant, of Things lying Grant, must take effect by the Delivery of the leed, or not at all.

3. If there be an old Lease in being, it suft be absolutely surrendered, or within

ne Year of its Expiration.

4. There must not be a double Lease in eing at the same Time; therefore, if one take a Lease r. according to the Statute, ad oust his Lessee, he cannot make a Lease according to the Statute.

5. It may be for fewer Years or Lives.

6. It must be of Things manurable and prooreal.

7. Of Land, &c. most commonly lett to arm for (b) 20 Years next before, by some (b) Quære. ised of a State of Inheritance. A Grant 1 Lev. 312. by 1 Syd. 416.

45.

by Copy, is a sufficient letting to Farm

within this Statute.

8. The accultomable yearly Rent mnft be referved, therefore a Leafe of one Acre, no utually lett, together with others common ly lett, referving a Rent exceeding the former, to the Value of that Acre, is not war ranted by the faid Statute, as to any part, be caule the old Rent is not referved out of the Land accustomably letten, but a new Rent issuing entirely out of the Whole, and where the Words of the Statute, which impone Such Ten'ts to make Such Leases, may be strill ly observed without any Inconvenience to the Party, they ought to be pursued. Parceners after Partition, may Leafe the Land refervings Rent pro Rat, for otherwise they could make no Lease, unless all would agree. So Ten't I may lett part of the Land accustomable letten, referving Rent pro Rata, for perha he may not be able to get a Ten't to take the Whole. It is not necessary to referve a He riot, or to reserve the Rent at four Feath tho' formerly the Leafes were fo made, fo the Words of the Statute only require the the yearly Rent, or more, be referved.

of Waste, therefore a Lease L. with a Rem

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for L. is not within this Statute.

All Conveyances whatfoever made by a clefiaftical Corporations are made void 1 El. 19. and 13 El. 10. except Leafes a Lives, or 21 Years from the Time of the making, whereon the old yearly Rent, a more, is referved.

The fame Rules must be observ'd in maing Leafes within the Exceptions of the id Statutes, as are required in Leafes made cording to the 32 H. S. except in two afes.

1. Leafes within the Exception of those atutes must be made to begin from the laking, and not from the Day of the Mang, which would last a Day longer than the Vid. atute allows, and if a Leafe one Day longer be 3 Lev. 438.

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2. The 32 H. 8. does not enable the Perins therein mentioned to make a concurnt Leafe, when there is an old Leafe in ing of a Years continuance, but no conment Leafe is reftrained by the aft or 13th El. so that it be made to commence from e Miking out TA ELIT enalts That the 13th . 2. Shall not extend to Houses in Cities and owns, but that the same may be granted as of might have been before the 13th 11. Teven Fee, so that a gull Recompense be made of ands of as good Value, ) and Leafes may be ade of Houses for 40 Years, charging the Leswith Repairs, &c. Provided that no Leafe permitted to be made by Force of the faid Act Rev'n, but this Act mentions only Persons frain'd by the 13th El. Therefore it (a) ex-(a) Wats nds not to Bish ps who are restrained by the 330. fonly, and are not within the 13th. 18 El. 10. toy by acts, That all Leases by Persons restrained by roid be 13th shall be void, whereof any former are steepers in heing and ease is in being, and not to be surrender'd, of it spir'd or ended nithin 3 Years after the ma-ent, ong of the new Leafe. But it seems, that con-trent Leafes of Houses in Towns, which are

(a) Wats 344. Q.

prohibited by the 14th El. are (a) not made go by this Statute, for it only mentions Persons n frain'd by the 13th, but the Restraint there is wholly fet loofe by the 14th El. as to fed Houses, and the 18th is wholly a disabling Su tute: And concurrent Leases made by Bishor remain as they were before the said Status therefore if they are confirmed by Dean an Chapter they are good, the' there are mi than 3 Years in being of an old Leafe, but they are not confirmed, they must follo the Directions of 32 H. 8. By 18 El. Leases by Colleges and collegiate Churches void, unless one 3d of the old Rent be reserve in Corn at the Rate of a Quarter of Wheat every 6 s. 8 d. and a Quarter of Malt for eve 5 s. of the old Rent.

Notwithstanding 12 El. fays, that i other Grants, Oc. Shall be void to all Pu poses; yet if they be made by a sole Com ration, they shall be good against the Less if by a Corporation Aggregate, they h be good fo long as the fame Person con nues Head. Nor do the faid Acts extend grants of ancient Offices of Necessity grant with the usual Fees. But if they have been usual ucce granted for one Life only, a Grant thereof ho' more Lives, or in Rev'n, is not good; but

10 Rep. 6.

Cro. Ca. 557.

they have been usually granted in Revin, th may be still so granted, that the Office may always full.

Ten't of the Land and a Stranger join a Lease T. by Indenture, this is the Lease and a the Ten't only, and the Confirmation of Ten Stranger, and as to him it works only ime. Conclusion. Two several Ten'ts of sever ime.

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ands join in such a Lease, it shall enure as the several Lease and Confirmation of both, and shall work no Conclusion, because an terest passes from both. B. Lessee for C.'s sife, and he in Rem'r join in such Lease, is the Lease of B. while C. lives, and after that is Death, it is the Lease of the other, and the is the Lease of B. while C. lives, and after the S Death, it is the Lease of the other, and a le Confirmation of B. and so it must be eaded, for if the Lessee be ejected, and but ring an Ejectment, and declare of a Lease by obth, and upon not Guilty pleaded, it be und specially, it shall be adjudged against im, for tho' the Words of such Deed be the serve int Expressions of both, yet it is so far only at le Lease of either of them, as the Lessee devected his Possession from theirs; but such a case works no Conclusion, causa qua supra. The large, Ten't T. dies without Issue, Granemay avow by Force of a Grant by him here.

A Lease T. by one 15 years old is voided at Common Law, but it may be good youthom; a Lease T. by Bishop or Ten't not within 32 H. 8. is voidable by the successor of silue. A Lease T. by Ten't T. with but in the Statute, is void as to but in in Rev'n or Rem'r. A Lease T. by Parana, nor Vicar, is void as to the Successor, a case L. is voidable: So a Lease T. by a Precend, or Archdeacon, (not made according to Vid. in the state L. is voidable.

Terminus signifies not only the Limits of time, but also the State that passes for that lives ime. As if Lessor for 20 Years make a Lase.

Lan

Leafe

Leafe to begin after the Expiration, predict Termini viginti annorum, it shall commence on a Porteiture, or Surrender of the fil Leafe, but if it had been made to begin m from viginti annorsm predict', it should not commence till the 20 Years were of

Proper Words to make a Leafe, aren grant, demife, to farm lett, betake, and whatever Words amount to a Grant, a

committo, Oc. Every Leafe Y. when it is to take effect in

Interest or Possession, must have a certain Beginning and a certain End, therefore Leale for fo many Years as J. S. Thall lin is void, ab imitio: But it may be limited in take effect upon an uncertain Contingent as when T. S. Mall pay 201. and it may be made certain by Reference to a Certainty as for so many Years as J. S. has in the Mannor of D. A Lease by Parson for; Years, and fo from 3 Years to 3 Years, 6 Vid. 1 Rol. long as he shall be Parton, is good for Years, if he continue Parion to long, for so much only is certain, the rest uncertain and void. A Leafe for to many Years s 7. S. shall name, is uncertain at first, but good when he has named them: A Leak for 21 Years, if f. S. live so long, is a good Lease for 21 Years, determinable on the Lease for 21 Years, determination Period ir, Death of F. S. for there is a certain Period ir, his cannot last, the it may, his fix'd, beyond which it cannot last, the it may determine fooner.

For many Respects, Leases at Common Law could not be made for above 40 Years, and it was the better Opinion, that no

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Ab. 850.

fice T. could falfify a covenous Recoverythe Freehold; but the Statute of Glone. ves Power to Leffee T. if the Leafe were by ring, to be received upon Default of the echolder, and to try whether the Pleas ere moved by Collusion, but this gavemedy in no other Cafe, nor to Ten't by ecution, but by 21 H. 8. 15. all Ten'is and Ten'ts by Executors, may fallify all inner of Recoveries on feigned Titles; to a Guardian.

Parcener makes a Lease Y. and after makes

ctition by Confent, and has too little alted to her, the Lessee may enter into so ich of the others Land as will make his the Sheriff, it should have bound the

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the swithout Issue, the Lease is void as to only in Rev'n, but it shall be good against a Wife when endowed, for her Estate is rived out of the Estate T. under which the state on be born, it shall be voidable or good to him, according as it agrees with the but ture the it he would as to him, according as to him in Rev'n. but tute, tho' it be void as to him in Rev'n, Leak K. had made a Gift in T. to hold by Kt.'s good vice, and Donee had made a Lease for the T. and died, and the K. in Right of the Period it, during his Wardship, or primer Seiman, had avoided the Lease, yet the Islue af-, had avoided the Leafe, yet the Islue atwards might have affirm'd or avoided it cars, Dower avoids for her Life a Leafe T. t no made

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made after the Coverture, it shall be it force after her Death.

But if a Patron grant the next Avoid ance, and then Parson, Patron, and Ordinary make a Lease 7. of the Glebe, the Parson dies, and the Grantee's Clerk is in ducted, the Lease shall never revive, he cause it was avoided by one who had the or whole Estate of the Glebe in him; so when r Husband avoids a Fine levy'd by the Wif it shall not bind her after his Death; f fed where a Woman is endowed of an Advorfon which is appropriated, and present and her Clerk is inducted, and dies, the Appropriation is diffolved, because the la cumbent that came in by Presentation h the whole Estate in him, and the Fee being on discharged, cannot be charged again without new Grant. Ten't T. makes a future Leaf leir, and dies, his Issue infeoffs A. the Ten uch commences, A shall have the same Elected d V on that the Issue had, to affirm or avoid the Su Leafe. lof

Lesse. Lesse r. before he enters has an Interestibility (called in Latin, interesse Termini,) which usbas grantable over, and shall go to Execute ame of c. and shall remain good, tho' the Lesse rm die before the Lesse enters. A Release the Lesse such Lesse shall discharge the Rent reserved, but cannot encrease hall gestate: Nor can the Lessor pass the Render the Name of the Rev'n, before the Lesse shall genters. If two have such a joint Interest and one die, it shall survive to the other. The Husband may dispose of a Term the aforthe has in his Wife's Right: If he do not a Po

it he Survivor of them that have it. If Hufand make a Leale for Part of the Term, and die, the Wife shall have so much of the and make a Lease for Part of the Term. the ors of the Husband shall have the Rent rethe ors of the Husband shall have the Rent re-rived; not the Wife, for she claims not un-ber the Lessor. If he grant the whole on the ondition, and die, and his Executors en-ter for the Condition broken, they shall r for the Condition broken, they shall we the Term. For the Husband having dis-vid. Supra. the r for the Condition broken, they shall vie the Term. For the Husband having dif-vid; so the Whole, the Wife had no manner of 18. The left of the Whole, the Wife had no manner of 18. The pere the Heir of the Part of the Father enters the heir of the Part of the Part of the Part of the for, who was seised as Heir of the Part of the Mother all enter upon him, for the Heir of the Part the Father can't possibly hold those Lands as least leir, because he is not of the Blood of the first the Father. A Lease is made to Husband deed died wise for L. Rem'r to the Executors of the Survivor for T. this is not in the Dispolated bility. Husband and Wife are ejected, with usband brings Ejectment in his own ame, and recovers: This vests the whole term in him.

Lease T. made to J. S. and his Heirs, or a sole Corporation and his Successors, all go to Executors.

Rev. A Lease T. having no beginning limited, limited to begin from the making, or meter of the 30th of February, or from the End and a former Lease, either void, or missecited and point material, shall begin on the Day

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of Delivery. A Lease T. limited from the Date, or the Day of the (a) Date, shall be (a) Vid. 3 Lev. 438 gan the Day after the Date, but if it be die Confectionis, it shall begin the Day after

the Delivery.

If one make a Leafe F. of Land, or of the Herbage, or Velture of Land, or any other Tenement minurable and corporeal, he man diffrein for it, or have an Action of Debr and if one make fuch heafe of a Revin a Rem'r of fuch Tenements, he may diffren Oc. for the Rent referred, when the Polestion comes to the Lessee by Force of su Leafe. But none, except K. can referve Rent out of incorporeal Inheritances, a which no Recounse can be had for a Diffred as Fairs, Tythes, Gr. yet, if a Subject dot reserve a Rent on a Lease Y. of such Inhen tances, he may have an Action of Debt for it by way of Congract, but can't diffrein but if the Leafe were fon Life, and there ha been no Covenant on the Part of the Left to pay it, the Lessor had no Remedy le I Law; not an Action of Debt, because it was to Servid for Life; nor as reall or mix'ds Action because it is but a Sum in gross; Sed Q. If be not relieved by 8th of Qu. A. which gives a Action of Debt for Rents referred on an Lease L. iole. Corporation

There is a Difference betwirt the Word Refervation, and Exception, the first in, Proper, where some new Thing, not be Este before, is to be rendred to the Lesson top, of the Second is where part of the Think ere granted is faved to the Granton; proposed Words of the First, are reservando, reduce the the be.

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lo, folvendo, inveniendo, dummodo, and the ke; the Words exceptis, Prater, Gc. are roper for the Second; out of a General, a art may be excepted, as out of a Mannor ne Acre, but not a Part out of a Certainy, as where 20 Acres are demifed, except-Rent can be referred to none but the Lef-

or: If two Jointenants make a Leafe, rerein to both, unless it be by Indenture, in
Poly thich Case it shall enure to one alone, by
Very of Conclusion. Rent generally re-

possible Case it shall entire to one alone, by shich Case it shall entire to one alone, by shich Case it shall entire to one alone, by shich Case it shall entire to one alone, by shich Case it in Fee, goes to him and his leirs, by Implication of Law, as incident to the Rev'n; but if it be reserved to the Lesson, to him and his Assigns, or to him and his Executors, it determines by his Death, to expression facit cessare Tacitum: But it has rein (a) resolved, that a Rent reserved to the (a) I Vende had essent and his Executors and Assigns, during the 161.

Lesson shall go to the Heir.

Dogs, Coneys, &c. cannot be distreined as rent, because no one can have a valuable or Rent, because no one can have a valuable Property in them, and an Ax in a solid lan's Hand cutting Wood, or an Horse hich a Man is riding on, are privileg'd or the Time. (b) But it seems that Horses (b) I Syd. saving a Cart may be distrain'd for Rent, and 122, 140.

Note a Man riding on an Horse be Damage Feristition, the Horse may be led to the Pound with not be Man upon him. Cloth in a Taylor's Lesson, the Horse may be distrain'd, because it is Thing ere for the Maintenance of Trade. Nor propose of Shocks, because they can't be restor'd reduce the same Plight; (but if they be in a Cart, and the same Plight; (but if they be in a Cart, and the same Plight; (but if they be in a Cart, and the same Plight; (but if they be in a Cart, and the same Plight; (but if they be in a Cart, and the same Plight; (but if they be in a Cart, and the same Plight; (but if they be in a Cart, and the same Plight; (but if they be in a Cart, and the same Plight; (but if they be in a Cart, and the same Plight; (but if they be in a Cart, and the same Plight; (but if they be in a Cart, and the same Plight; (but if they be in a Cart, and the same Plight; (but if they be in a Cart, and the same Plight; (but if they be in a Cart, and the same Plight; (but if they be in a Cart, and the same Plight; (but if they be in a Cart, and the same Plight; (but if they be in a Cart, and t

or Damage Fesant, they may be distrain'd had And now by the 2d Gul. & Mar. 5. Corn in Sheaves or Cocks, or loose, or in the Straw, or Hay lying in a Barn, or upon a Hovel, or Rich may be seis'd, secur'd, and lock'd up till reple M. may be seis'd, secur d, and were my vied, so as it be not remov'd to the Damage of wirely so as it be not remov'd to the Damage of wirely so as it be not remov'd to the Damage of wirely so as it be not removed. the Owner; and by the said Statute, if the Ten and doth not replevy his Goods taken, within 5 Day, affectively shall be appraised by two Sworn Appraised, he land sold. By the 8th of Q. A. No Goods be softing in any Tenement leas'd for Life, Y, or W, her shall be taken by Vertue of any Execution, a her the Suit of a Subject, unless the Plaintiff shall be taken by Vertue of the Plaintiff shall be taken by Vertue of the Plaintiff shall but the Suit of a Subject, unless the Plaintiff shall but the Suit of a Subject, unless the Plaintiff shall be taken by Vertue of the Plain

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d) bant, without giving Notice, for he is no way blame for the Want of repairing the Fences. He that distrains Things having Life, affer for fo doing; if the Pound be covert, of: He that distrains Goods, must put tem in a Pound covert within 3 Miles in he same County: If he put them in a shall ound open, he must answer for them if so ol'n, or damag'd.

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bund open, he must answer for them if in ol'n, or damag'd.

He whose Goods are unlawfully Distreinly, may rescue them before they are impossible of the bunded, not after, for then they are in used of the use of the last of a Pound unlock'd; but if he take them the ut of a Pound lock'd, a Writ of Parco Busto lies against him, and he that direct the distrein'd, may take them again wherever he is in the use of the last Day of the use of the erm was not distreinable, because the erm was ended; but now by the 8th Qu. A. Sor is y Lessor may distrein for Arrears of Rent assert the Lease is determined, provided it be the ade within 6 Months, and during Lessor's suffer the, and Ten'ts Possession.

Lessor the yearly Rent; but if one not seis'd of Co.L. 162. The Lessor in such the great the Rent reservit, and the provided the great the yearly Rent; but if one not seis'd of b. 292. b. The Lessor may plead that the Lessor had not chast the Lessor had bring Debt for the Rent reservit, and the Lessor had not chast the Lessor had not the Lessor had bring Debt for the Rent reservit, and the Lessor had not chast the Lessor had not the Lessor ha

thing in the Tenements at the Time of the Leafe: Or he may plead non dimist, and give in Evidence the special Matter, (for is not the bare Using of the words Lease, De mise, &c. that makes a Lease, but the Trans ferring of an Interest to the Lessee;) but if the Leafe were by Indenture, he could no plead this Plea, for an Indenture conclude both Parties. If B. Lessee for C.'s Life make Lease Y. and purchase the Rev'n, and die gne B. may confess and avoid notwithstanding and Lease Y. and purchase the Rev'n, and de the Indenture, for an Interest pass'd by it and therefore it works no Estoppel, as fill awould have done, if B. had had nothing it would have done, if B. had had nothing it would have done, if B. had had nothing it will be Land. If one take a Lease of his own life Land by Indenture, rendring Rent, he shall be estopped; but if it were only of the Has it bage, he might say that the Lessor had no tech thing in the Land; for tho' a Man be estopped to affirm the Trath, when it is directly contrary to what he has expressly acknowledg'd by his on the contrary by Argument, let the Consequence Live never so plain. After the Lease taken by on of his own Land is ended, the Estoppel de Intermines: For the sole Intent of the Indentum offor is mutually to bind each Party to sulfill it for Agreement therein contained during the Termines therein determined during the Termines therein determined they have had the sum Estet which was design'd. the Indenture, for an Interest pass'd by epli ish Lei e W Effect which was design'd.

At Common Law, any Estate of Freehold Posses in Land might pass by Livery of Seilis conta without Deed, and Leases T. of Land were distingted without either Livery of Seisin, a ords Deed. But now by 29 Ca. 2. 3. all Lease ben to Estates, Interests of Freehold, or Terms into Tem ordin

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ears of Hereditaments, not put in Writing, nd fign'd by the Parties making them, or their agents authorized by Writing, Shall have no reater Effect than as Estates at Will, except eases not exceeding three Years, whereof the ent shall be two Thirds of the full Value. And Il Assignments, Grants, or Surrenders of such lake states, not being Copyholds, must be by Deed die gued, ut supra, or by Operation of Law: him and all Declarations or Creations of Trust must

ind all Declarations or Creations of Trust must by Writing sign'd by the Party, or by his last will in Writing, excepting Trusts, resulting by application of Law, or transferr'd, or extinsish'd by Act of Law.

Lessee T. may enter by Force of the Lease without Livery of Seisin; but regularly no vid. infrance the ithout Livery of Seisin; but regularly no vid. infrance to being in his House, say to B. I demise you this House for Life, this gave no eehold before the Statute without Livery, or since the Statute with Livery.

Livery of Seisin is a solemn Delivery of a Possession, and is Twosold. 1. In Deed. In Law. Livery in Deed, is when the offor and Feossee being both on the Land, at Feossor delivers to the Feossee a Turf of Tenses Land, or a Ring of Gold, or any other the statute of the Possession in the Name of all the Tenements of the Possession in the Name of all the Tenements chok Possession in the Name of all the Tenements
Seils contained in the Deed of Feossession, of it seems that it may be well made by
on, of ords only without any solemn Act, as Contra Crowners the Feossession the Feossession that the Feossession or the Feossession of the Deed, &c. but

Ten ording to the Form of the Deed, &c. but

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the bare Delivery of the Deed on the Land shall only have the Operation to make take Effect as a Deed, and shall not amoun to Livery of Seisin, unless it be deliver in the Name of Seisin of all the Land

Livery in Law, is when the Feoffor and Feoffee being in view of the Land, the Feoffor, after Delivery of the Deed, says toth Feoffee, 'Go enter into the Land, and ta Possession thereof according to the Form this Deed, Gc.' Such Livery is good ifth Feoffee enter, tho' the Land lie in another County; (and before 29 Ca. 2. 3. Livery) Law passed the Fee without any Deed;) but either of the Parties die before the Feof enters, the Livery is void, for it passes a Freehold in Deed, or in Law, before Entry

Litt. Sec. 66. and by the Death of the Feoffor, the Land longs to some other, and the Feoffee can't ent without divesting his Estate; by the Death the Feoffee there is no Purchaser remaining take the Estate; and the Heir shall never to

Co.Litt.50. by Purchase, where the word Heirs is not a to describe a Purchaser, but only to limit Estate design'd to pass. Yet if the Feet claim the Land as near as he dares, for fe of Death, or Battery, fuch Entry in La

shall execute the Livery in Law.

A. makes a Deed of Feoffment of dive Parcels of Land to diverse Men jointly, a makes Livery of one Parcel to one Feet according to the Deed, this passes all, a makes Livery, secundum formam Carta, find t Life, yet the Fee shall pass, for the Livery

not only made for Life, but also according to the Form of the Deed, i. e. according to the Quantity and Quality of the Estate conain'd in the Deed, which necessarily includes a State L. (a) But where the Deed and the (a) Litt. Words used in the Livery are inconsistent, no- Sed. 359.

hing passes by the Deed.

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A. makes a Lease Y. by Deed, or gives Land by Deed to B. to hold to him and his Heirs after the Death of A. Livery of Seisin made according to the Form of either Deed whether before or since 29 Car. 2. 3.) is void, or the first Deed expressly gives a Chattel only, and the second gives a Freehold in Futuro, Vid. Supra. and consequently is void: And where the sole 63. Purport of the Livery is to make the Estate conain'd in the Deed effectual, it shall rather be void, than strain'd to give a Freehold in the first Case, or a present Estate in the second, gainst the manifest Intent of the Parties.

Not only fix'd and immoveable, but noveable Inheritances also may pass by Lilow of 80, are by Culton yearly fet out to
Man, fometimes in one Part, fometimes
n another; if they be Parcel of a Mannor, hey shall pass by the Name of the Mannor;
they be in Gross, the Deed must be of
the 13 Acres lying in the Meadow, withlive out describing any in Certainty: And by ivery of the 13 Acres allotted to the Feof-feof or that Year, all his Interest shall pass. When one Mannor is divided betwixt Par-eners, so that one shall have it one Year, and the other the next, &c. without Que-tion Livery must be made of that: Where

two Mannors are divided betwirt them alterius vicibus for ever, a Deed of Feoffment must be made of both, and Livery must be of one of them one Year, and of the other the next.

One may have an Inheritance in an upper

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Chamber, and pass it by Livery.

Diss'ee makes a Deed of Feoffment, delivers it, and by Attorney enters and give Seisin; this is good, for a Deed of Feof ment hath its whole Operation from the Livery of Seisin, and the Feoffor is in Posts sion when that is made according to the But if Dise make a Lease ?. and deliver it, and then deliver it again upon the Ground, yet nothing passes to the Les fee, for a Lease Timust take its Effect by the Delivery of the Deed, or not at all, but a the Time of the Delivery he was out of Pol fession, and the second Delivery of a Ded But if the Deed had been delivered to a Stranger, as an Escrow, to be delivered as his Deed on the Land, it had been good.

Lessor 7. of several Closes in one County, makes Livery of them, the Lessee or his Wise, or Servants being then in the House, or on part of the Land, this is void, so the Possession continuing in the Lessee, mo Livery can be made of it; but if his Cattle only had been there, the Livery had been

good.

Where a Man has two Ways of passing Land, both at Common Law, and intende to pass it by one of them, and it can't pass he the Way he intends, it shall pass by the other

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## Of Ten't for Term of Years.

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there be sufficient Wirds. As if A. seis'd of wo Acres, make a Lease ?. of one of them, nd after, intending to pass them both by Peoffment, make a Deed of Feoffment, and ive Livery in the Acre in Possession, in the Name of both, the Acre in Possession only affes by the Livery; yet if the Lessee attorn, which was necessary before 4 & 5 Anna 16.) he other shall pass by Way of Grant of a Rev'n, and Attornment, for this Way of Conveyance is by Common Law, as wells the other. But where one intends to pass and by Conveyance at Common Law, nd it can't pass that Way, the Law will of raise a State by Way of Use by Force of he Statute; as if a Father make a Charter of coffment to his Son, and a Letter of Atorney to deliver Seifin, and no Seifin beelivered, the Law will not raise an Use to he Son, by constraing the Charter as a Coveant to stand seised to the Use of the Son in onsideration of natural Affection; For the Faher expressly design'd that it should enure by vay of Feoffment, by Force of which Coneyance, the Law would adjudge the Son o be in the Land by the Father, which is call d n the Per, whereas by the other he is ather esteem'd to come after him, than by him,.. hich is call'd in the Post; and also if it could enure by way of Covenant to stand seis'd, would pass the whole Estate immediately, and affing relequently the Livery of Seifin could take no ffect. But latter Authorities are contrary to tends iffect. But latter Animor med to the sy Lord Coke, as to this Point, because the assist Principal Intent of the Deed is to pass an Estate 3 Lev. 9, 12, other, the Son, and it shall not be frustrated by Ad-213. bering 3 Lev. 371. hering too strictly to the Form of the Conveyance.

306.

if by any Construction it can be made effectual. 3 Lev. 126. Tet it has been resolv'd that a Covenant to len a Fine, which shall be to such and such Uses. doth not amount to a Covenant to stand seisd because then the Party could not levy the Fine: But in this Case, the Words of the Deed do not purport the Grant of an Estate passing immediately, as they do in the Case above.

> A House or Land belonging to an Office, or Chamber belonging to a Corody; pass by Deed without Livery by the Grant of the

Office, or Corody.

A. makes Lease Y. Rem'r for L. T. or Fee, and makes Livery to Leffee T. this paffes the Freehold to him in Rem'r; but if Lessee 7. enter before Livery made to him, the Freehold rests in the Lessor, for Livery is void when made to one in Possession before. A makes a Leafe Y. to B. and C. without Deed (before 29 Ca. 2. 3.) Rem'r to D. and make Livery to B. in C's Absence in the Nam of both, this vests the Rem'r in D. for the Law intends that there is such a mutual Tru between those that take a joint Estate, that the Act of either of them is effectual for himle and the other, especially where 'tis not prejude cial to him; but when two Attorneys have bare Authority to receive Livery jointly, it be made to one in the other's Absence secundum formam Carta, it is void. For the being Strangers to the Land, and their Author rity depending wholly upon the Letter of Attor ney, their Acting is no further of Force chantha is purfued.

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A. intending to infeoff B. and C. without Deed, makes Livery to B. in C.'s Absence, in the Name of both, this is void as to C. (whether made before or since 29 Ca. 2. 3.) for no one in his Absence can take or give a Freehold by Livery, but by Attorney warranted by Deed; yet one may take a Freehold by way of Rem'r, by Livery made to another, in his Absence, as in the Case above, of a Lease T. Rem'r in Fee. And if a Deed of Feoffment be made to two, Livery to one in the Name of both is good.

Tho' a Deed may be delivered without Words, yet Livery of Seisin can't be made

without Words.

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A. makes Lease Y. to B. Rem'r in Fee to C and makes Livery to the Lessee within view, this is void, for none can take by Force of such Livery, but he that takes the

Freehold himself.

When Lessor and Lessee come upon the Ground on purpose for the Lessor to make, and the Lessee to take Livery, such Entry vests no Possession in the Lessee before Livery, for if it should, the Livery would be void. So when Diss'ee enters to deliver a Release to the Diss'er upon the Land by Agreement, this Entry for such Purpose avoids not the Diss'in: For affectio than nomen imponit operi two. But if the Diss'er inteosf the Diss'ee and others, yet the Diss'ee is remitted to the Whole; for while

Diss'ee is remitted to the Whole; for while Litt. Sec. his Entry continues lanful, be can't receive an 63.

Estate from the Diss'or.

If a Feoffment be made by Deed, (or without, before 29 Ca.2. 3.) of diverse Lands in

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of one Parcel in the Name of all passes all. But if the Lands lie in several Counties, there must be Livery made in each Coun-

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When A. grants Land to B. in Exchange for the Land which B. has, and B. grants his Land to A. in Exchange for the Land which A. has, each may enter into the other's Land, so put in Exchange without Livery of Seisin. A Freehold likewise passes without it, by Devise. Surrender, Release, or Confirmation to Lessee Y. or W. or a Fine which is a Feossent of Record. At Common Law, an Exchange was good without Deed where the Lands lay in the same County; where they lay in diverse, it was not. But Things lying in Grant, could never be exchanged without Deed indented.

Things exchanged need not be in Esse, before the Exchange made, for a new Rent may be granted out of Land, in Exchange for Land. Nor is Transmutation of Possession required, for a Right to Land, or Rent, may be released in Exchange for Land. And the Things exchanged, need not be of the same Nature, so they concern Lands or Tenements, as Rent may be exchanged for Land; Tythes, or Tenure by divine Service for things Temporal: But Land can't be ex-

chang'd for an Annuity.

In Exchange, the Estates mutually given in Exchange must be equal in Quantity, for if a Fee Simple be exchanged for a Fee T. of a Tail general for a Tail special, &c. the Exchange is void. But the Quality of Estate needs

S.P.

eeds not to be the fame; therefore, two Mennay give Land to two others jointly, and the ther in Exchange give to them in Comnon, or they may give a fole Estate, and eceive a joint one. So a Subject may exlange Land with K. tho' K. be feis'd of he Land exchang'd in his politick Capacity, nd the Subject in his natural. Nor is it ecessary that the Parties to the Exchange. ave an equal Estate-when they make it, or if Ten't T. or Husband feis'd in the Vife's Right make an Exchange, and give nd take a Fee, it is good, till avoided by Vife, or Iffue.

This Word, Excambium Exchange, is ab-

lutely necessary.

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It must be executed by Entry in the Life both Parties, for no Freehold paffes in Vid. supra. ked or Law before Entry, and therefore if 78. ther of the Parties die before Entry, the schange is void. But it is not necessary at the Things given or taken in Exchange hould be equal in Value, for the Ceremonies quired for the Solemnity of a Conveyance being lerved, the Law examines not into the Sufficicy of the Consideration. An Infant exchans Land, and at full Age occupies the Land ken in Exchange, this binds him, because was not void, but voidable.

Lessor 7. dies before the Lessee enters, yet by he enter, for by the Lease he has a ight presently to have the Land according

for othe Form of the Lease, and the Ferm beor 1g vested, the Lessor's Death cannot divest
ExBut if A make a Deed of Feoffment,
state ad a Letter of Attorney to deliver Seisin, Vid. supplements and 78.

and dye, this avails nothing, for the other has no Right to have the Tenancy according to the Deed before Livery, and by the Death of the Feoffor, the Land belongs to fome other; but if a Corporation aggregate make a Deed of Feoffment, and a Letter of Attorney to deliver Seisin, the Livery i good after the Death of the Head, because the Body Politick remains.

An Attorney is one fet in the Place of another; and is either Publick, as an As torney at Law, whose Warrant is, Tali ponit loco suo talem Actornatum suum; or Pi vate, as those authoris'd to deliver Seisin which must be warranted by Deed; Litter Acquietancia signifies a Deed of Acquittance so a Letter of Attorney signifies a Warran of Attorney by Deed.

Infants, Monks, Persons attainted, Es communicate, Villeins, &c. may be Attor neys to deliver Seisin. A Wife, as Attorne to another, may deliver Seisin to her Hul band; so may Husband to Wife, or he is

Rem'r to the Leffee L.

If an Attorney pursue not his Warrant what he does is of no Force. But if A feis'd of B. Acre and W. Acre make a Det of Feoffment of both, and a Letter of Attor ney to enter into both, and make Livery both, the Attorney enters into one, and makes Livery fecundum formam Carta; the ightiff is good, tho he enter not in the Name len't both, for it is Tantamount. So if the tet the Deed be to two, and the Letter of Attorney He at to deliver Seifin to both, and he deliver he kent, very to one only fecundum formam Carta and be

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this is good, tho' the absent Feoffee may waive it, for the Attorney purfued the Substance of his Warrant.

Leffee L. makes a Deed of Feoffment, and Letter of Attorney to the Leffor to make livery, and he make it accordingly, yet ne may enter for the Forfeiture. But if Perk. 200. Lessee T. make a Deed of Feoffment, and a 2. Letter of Attorney to the Leffor to make Livery, and he do it accordingly, this Livery shall bind the Lessor, for the Lessee had no Freehold whereon the Livery could enure: out in the first Case, the Lessee had an Estate shich might pass by Livery, and the Lessor who vas not privy to the Deed, might presume that toontain'd no greater Estate than the Lessee would lawfully make. But when Lessee r.

makes Livery, as Attorney to the Lessor, he Freehold passes from the Lessor, and the store ferm is not drown'd. For the sole Intent orner of the Parties is to pass the Freehold to the Hull Feosfee, nor shall the Lessee's Consent that the Lessor shall pass the Freehold, which he law-ully may pass, be construed as a Surrender of its Term.

If one as Procurator to another present to list own Benefice, he puts himself out of consolent of the Institution of the Ordinary, who is an intended, as an indifferent Judge, to admit the lightful Patron's Clark. If the Lord sell his med len't's Lands by Force of the Ten't's Will, the the Seigniory remains. But if cestayque of the len't and had made a Feosfment, the Rent land been extinct, tho' the Land had pass'd from thi from

ADT. 8. 9.

from the Feoffees, for he acted not by a bare Authority deriv'd from them, but his Conveyance was made good by the Statute, in respect of that inherent equitable Right which he

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had to the Land.

Diss'ee of two Acres makes a Deed of Feoffment, and a Warrant of Attorney to enter into both, and to make Livery fecundum formam Carte, the Attorney enters into one only, and makes Livery fecundum for mam Carte, the Livery is void, because the whole Warrant is not purfued, for the Estate of the Diss'or in the other Acre can't be divested without Entry, and what as Attorney does is no farther Valid than as he acts as such; but when he takes upon him to alter or diminish the Grant of him that impowers him, his Acts are void. But a Custom to grant Copyhold Lands in Fee, implies a Power to grant for L. Rem'r in Fee, for the Lord hath this Power in respect of his own Interest. not as a Substitute to another, & onne majus continet in fe minus. Lessor L. makes a Deed of Feoffment, and a Letter of Attorney to deliver Seilin, the Attorney enters on the Lessee, and delivers Seifin; this is fufficient to convey the Rev'n, for the month Warrant is pursued, and without doubt, if the Leffor had done the same in his own Person, the Rev'n would have pass'd.

A Letter of Attorney may be contained in a Deed of Feoffment, beginning omnibut Christi, &c. But not in an Indenture, un-

(a) 2 Roll. less the Attorney be made a Party. (a) Q As an Attorney must pursue the Author rity express'd in the Warrant, so must be oblerve

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bserve the Authority implied in Law, viz. That the Livery be made on the Land, for f it be made within View only it is roid.

Prohibition to forbid Ten't in Dower, or Curtefy, or Guardian in Chivalry to do Waste, lay at Common Law; but Lessor ould have no Action of Waste against Lefee, before the Statute of Glocef. cap. 5. beause it was esteem'd his Folly that he did ot provide against it by Covenant. But now by the faid Statute, Waste lies against he Ten'ts aforesaid, tho the Lease be but or half a Year. But the Writ must be geeral, quod tenet ad Terminum annorum, for here is no other Writ, and the Count must e special: And yet the Words of the Statute te Tenant for Term of Years, and the Star ute is Penal, which ought to be strictly onstrued; but the Cases of like Nature, shich can't be brought within the Words, Shalk ut by Equity be subject to the Penalty of a Staute, yet where they are comprehended within be Meaning of the very Words, it is otherwise: hus the Statute which makes it High Treason to ill K. or Petty Treason to kill a Master, are xtended to the killing of the Queen Regnant. r of a Mistress, because those Words are meant fany one to whom we stand related as Subjects, Servants; so in this Case, the Words Ten't or Years, signify any one that has a determirate Estate.

An Action of Waste lies for him that has he immediate Estate of Inheritance for Waste done in Houses, Gardens, Woods, Irees, Lands, Meadows, or Exile of Men 53.

to the Disherison of him in Rev'n q

Waste is either Actual, as where Lesse pulls down Houses; or Permissive, as who he suffers a House to be burnt by Negligence, or Mischance, or suffers it to be uncovered, whereby the Timber becomes Rotten. To pull down a House, is Waste, the it were ruinous when the Lessee came in unless he after rebuild it: But to suffer to be uncover'd is not Waste, if he found it uncover'd.

or Furnaces, &c. fix'd to the House, either by the Ten't, or him in Rev'n, be broken

or carried away, it is Waste.

Ten't must keep the House from washing tho' no Timber grow on the Ground.

If he do or suffer Waste, and repair be fore the Action is brought, an Action of Waste lies not, but he can't plead non sea vastum, but must shew the special Matter.

To cut down Fruit-Trees in an Orchand or Garden is Waste; but if they grow or

other Ground, it is not.

(a) rRoll.A. It is (a) Waste to build a new House, for 507. contra. it may be much to the Landlord's Prejudice; and it is also Waste to suffer it to be wasted when built, for then it is as much the Landlord's, as if built by himself.

It is Waste for Ten't of a Dove-house Warren, Park, Vivary, &c. to take so many, that such sufficient Store be not lest the found, or to suffer the Pale to decay

whereby the Deer are dispersed.

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To cut down or top, or do any Act that may decay Timber-Trees, is Waste; to fuffer the young Germins to be destroyed, is Destruction; Oak, Ash, and Elm, are Timber every where; Beeches, &c. are Timber only in those Places where they are used in Building, for Man's Habitation.

Lessee may cut down Underwood, but if he suffer the young Germins to be destroyed, or stub up the same, or cut down Beech, Maple, &c. standing in Defence of the House, or stub up, or suffer to be deftroyed, a conformation of these and such like London of Waste lies against him.

Action of Waste lies against him.

To cut down dead Trees is a conformation of Coal stroyed, a Quickfet Fence of White Thorn, for these and such like Destructions, an

To cut down dead Trees is no Waste; but turning of Trees to Coal for Fewel, when there is fufficient Dead Wood, is Waste: So to dig for Gravel, Stones, &c. n d in Mines not open when he came in, unfem less it be for the Repairs of his House.

Mat

To suffer Houses to be wasted, and then

To fuffer Houses to be wasted, and then fell Timber to repair them, is double

hard Waste.

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It is Waste to suffer the Wall of a River or the Sea to decay, whereby the Meadow or Marsh is surrounded, and becomes un-dictional profitable. But it is no Waste punishable, asted if it be suddenly surrounded by the Rage of the Sea. If the House be uncovered by a Tempest, the Ten't must in convenient oule Time repair it, but he is not compellable to repair a House wholly destroy'd by a Temesta pest, Lightning, Enemies, &c.

ecay It is Waste to convert Arable into Wood, or e converso, or Meadow into Arable. The

Ten't

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Ten't may take sufficient Wood to repair the Fences as he found them, but not to make new, and he may also take sufficient Botes.

To cut down Trees for Repairs, and sell them, is Waste by the Vendition, tho he buy them again, and imploy them in necessary

fary Repairs.

Lessor L. grants by Deed, that if Waste be done, it shall be redress'd by Neighbours without Suit; yet Waste lies, for such Grant is void, the Design being not to make the Lease without Impeachment of Waste, but we erect a new Court to instict the Penalty.

Exile of Villeins or Ten'ts W. or making them poor, whereby they depart from their Tenements, is Waste, and in the Statute of Gloc. is comprehended under the general Word Waste. Waste and Destruction is

their larger Sense are convertible.

Sometimes one shall join in an Action of Waste for Conformity, in respect of his Interest in the Place wasted, tho he has not an Inheritance; as if a Reversion be granted to two and the Heirs of one of them, or if two Jointenants, one in Fee, the other for L. join in a Lease L, they shall join in an Action of Waste.

Ten't T. hanging an Action of Waste, becomes Fen't T. apres, &c. the Action sails, because the Inheritance, which is the

Ground of it is determined.

One can't have an Action against an Executor for Waste done by the Testator, nor can the Heir or Successor have it for Waste done in the Time of the Ancestor or Predecessor.

Vid: Co. L. 258. reffor, for Actions grounded on Torts die with the Person. (a) But if there be two Parce- (a): Lutw. ners of a Rev'n, and the Ten't do Waste, 803.contra. and one of them die, the furviving Parcener, and the Islue of the other shall join in an Action of Walte, and (a) the surviving Par- (a) Co. L. tener shall recover Damages. And see the 198.2. 20 Ed. 1. which gives an Action of Waste to the Heir, for Waste done in the Life of his Anseltor.

Land is given to A. for L. to B. in Fee. B. shall not have an Action of Waste against d, on the Statute of Gloc. because they are

ointenants, but B.'s Heir shall,

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The Action of Walte ought regularly to be brought against him that did the Waste; but if the Grantee of Ten't in Dower or by Curtefy, do Waste, the Heir, in respect of he Privity, shall have an Action against he Ten't in Dower or by Curtefy, and reover the Place wasted against the Grantee. But if he grant over his Rev'n before, or fter fuch Ten'ts affign their Estates, his Grantee shall have an Action against the Affignee only. It is faid, (b) that if Guar- (b) F. N. B. ian by Ki.'s Service did Waste, and af- 56. A. cont. ign'd over his Estate, that the Action lay gainst the Assignee.

Ten't in Dower, or by Curtesy, Lessee L. r?. thall answer for Waste done by a tranger; but Guardian by Kt.'s Service hould not, because it was so penal to im, for by Magna Charta 4. Gloc. 5. e should lose the whole Wardship, he Waste be never so small, and if that nswered not the Damages, should satisfy 54.

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2 Inst. 302.

over and above, and if the Action were be prought against him by the Heir of full "

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Age, he should pay treble Damages.

An Infant, Baron and Feme, shall be punish'd for Waste done by a Stranger, and so shall the Wife, that has the Estate by Survivor, for Waste done by the Husband in the first the public fear his Life-time, for Waste is against the publick fear Good, and the Lessor shall not be prejudiced by uris the Ten't's Nonage or Coverture.

If there be two Jointenants for L. or Y. and one do Waste, it is the Waste of nly both as to the Place wasted, not as to the en

Damages.

The Husband of Lessee L. does Waste, The Husband of Lenee L. does Want, the fire the dies, no Action lies against him in the fore Tenuit, for she was Ten't, and he was only sain seis'd in her Right; but if the Wise were majout Ten't Y. an Action would lie against state him, for the Law gives the Term to him less. furviving the Wife.

Lessee L. grants his Estate on Condition, scag Grantee doth Waste, Grantor re-enters, the recu Action lies against the Grantee, and the Is

Place wasted shall be recovered.

A (a) Villein being Lessee L. doth Waste, Vaste, Lord enters, he shall not be punished for the Waste done before, but for Waste done W (a) Vid.Co. L. 184. b. after, he shall.

If a Lease be made to A. and his Heir, cove Vid fupra. during the Life of J. S. and A. die, the ply, Heir shall be punish'd in an Action of Tro 57, 5%.

Waste. Land is lett to A. for L. Rem'r to B. for at for L. Rem'r to C. in Fee, no Action of Walte ad in lies against A. during the Life of B. for i

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the

be place wasted should be recovered against A. would destroy B's Rem'r of the Freehold. hich is much favoured in Law. But if B.'s ouem'r had been but for Years, an Action of
lo Vaste would have lain; but Q. If B. should
urave no Remedy in an Action on the Case against ur. we no Remedy in an Action on the Case against him be first Lessee? If Lessor grant his Rev'n for lick ears, he can't have an Action of Waste using the Years, because he has granted way the Rev'n, in respect whereof such the ction is to be maintain'd; but if he had ally made a Lease Y. of the Land in Rev'n, the might have had an Action during the ears, for in such Case, the Privity remain'd the tween him in Rev'n and the Ten't, as it was the fore, and tho' the Place wasted be recovered wing the Ten't, yet such a suture Interest were mains, for it does not require a particular wing state, or depend upon the same as a Rem'r him tes.

him bes.

Waste lies (a) not against Guardian in (a) F. N.B.

Waste lies (a) not against Ten't by 2 Inst. 305. tion, scage. Nor does it lie against Ten't by 2 Inst. 305.
the recution.

If Ten't L. or Y. or their Assigns, grant
ter their Estate and take the Profits.

rer their Estate, and take the Profits, Taste, Taste lies against them by 11 H. 6. 5.

I for If Waste be done, Sparsim here and there done Woods, or Houses, throughout the hole, all the Woods or Houses shall be

Heirs, cover'd; but if it be in particular Parts, the aly, so much only shall be recovered.

In of Trees of the Value of 3 s. 4. d. have an adjudg'd Waste, but Bracton says, 3. so at some Waste, est ita modicum, no propter Waste ad inquisitio non sit sacienda. for if

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If a House be ruinous when the Ten comes in, or be burnt by Lightning or End mies, or the Lessor be bound to repair and will not, or the Leafe be without Impeach ment of Walte, tho' he be not compellable to repair, the Lessee may fell down Timbe growing on the Ground to repair it, or rebuil it as large as it was before, and justify his doing for the Law favours Houses for Man Habitation: And one Jointenant, or Ten'ti Common, may have a Writ De reparating faciendà against the other suffering an How to decay.

Leffee L. or Y. of Land may dig and the the Profits of open Mines, but he can't di for new, notwithstanding the Land lett with the Mines; for where the Words w bear a natural and easy Construction, as Expla natory of what otherwise would be dut ous, they shall not be construed so hard against the Leffor, as to put it in the Power the Lessee to ruin the Land: But if the Lan be lett with the Mines, and no Mines open at the Time of the Leafe, the Left may dig for Mines, else those Words would

be absolutely void.

A greater Estate may support a Less, m e converso; as if a Lease L. Rem'r T. be given to the same Person, both Estates it main distinct in him, and he may gran over either of them: But if a Lease Y. Rem L. be made to the same Person, the latt

drowns the former.

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If a Lease L. be made to A. Rem'r L. Vid. fupra. B. Rem'r to A's Heirs, the Fee velts in A

o if a Lease L. be made to A. Rem'r to his executors for T. the Chattel wests in A.

## Of Ten't at Will.

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TEnant at Will, is one in Possession of Tenements, by Force of a Lease thereof nade to him to hold at Will of the Lessor, rat the Will of the Leffee; for if it be at he Will of one of the Parties, the Law imlies that it shall be at the Will of the other lfo.

If Leffee W. fow Corn, or Flax, or Hemp, r fet Roots, or any other Thing that yields present annual Profit, and the Lessor oust im before it be ripe, the Lessee shall have tee Entry, Egress and Regress, to cut it, data for and carry it off, because he knew not when the Lessor would enter. But if Lessor for it be ripe the Term expire, the Lessor hall have the Corn; and if Lessor hall have the Corn; and if Lessor for W. Less lant young Fruit-Trees, or Oakes, Ashes, lms, &c. which yield no present annual rofit, Lessor shall have them when the ease is determined.

It seems that if Lessor reserve a Rent, Lessee

lt seems that if Lesjor reserve a Rous, 20 1 Roll.

(a) before the Rent-Day can't determine his (a) 1 Roll.

(b) before the Rent-Day can't determine his (a) 1 Roll.

(c) 1 Roll.

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(e) 1 Ro L.t neertain, fow the Land, and their Estate etermine by Death, they, or their Execution or their Executions, shall have the Corn. So if Ten't by tatute Merchant sow the Corn, and then be

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be fatisfied by a sudden Profit. But if Hull band and Wife be Jointenants, and he for the Land, and die, it is faid that the Will shall have the Corn, which, as accessary to the Land, Shall-go with it to the Survivor.

If Lessee W. determine his Will, or if Woman Ten't durante viduitate marry, o if a Leafe be determined by Title Pan mount, or Act of Leffee, as Forfeitun Breach of a Condition, Oc. the Leffee In

not have the Corn.

If a Diss'or sow the Land, and Diss re-enter, he shall have the Corn, the were fever'd by the Diss'or, for his Regne recontinues his Freehold in Judgment Law from the Beginning.

If Leffee W. improve a Meadow by Over flowing, trenching, or fowing Hay-feet Ge. the Lessor shall have the Grass, because

it is the natural Profit of the Land.

There is an express and imply'd Deter mination of the Leffor's Will; Express, who he comes on the Land, and forewarns the Leffee to occupy; Imply'd, when without Consent he cuts down a Tree, (not bein excepted in the Lease,) or puts in his Beal to a Common appendant, or does any oth Act which would amount to a Wrong, the Lease continued. But Words spokent the Lessor, from the Ground, determine no his Will till the Lessee have Notice; I more than one can discharge a Factor or A torney without Notice. If a Lease W. made to or by a Feme Sole, and the man and yet the Lease continues; so if Husband an carry; Wise lease the Wise's Land at Will, and the ermin Hu

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Husband die, or if there be two joint Leffors or Leslees W. and one die, in all these Cases the Lease continues.

As the Law gives the Corn to the Leffee. fo it gives him free Entry, &c. to carry it off, for quando Lex aliquid alicui concedit, concedere videtur, & id sine quo res ipsa esse non potest, and if the Lessee be disturb'd of the Way, he shall have an Action on the Case. But if a Ditch be made overthwart a publick Way, no one disturb'd by it can have an Action on the Case, (unless he suffer a special Damage,) lest there should be a Multiplicity of Actions; but such a Nu-fance must be presented in the Leet, or Torn. But every Inhabitant of a Town may have an Action on the Case for a Disturbance in a customary Watering-Place. otherwise he should be without Remedy.

There be three kinds of Ways; 1. A Foot-Way, in Latin iter. 2. A Pack and Prime-Way, call'd Actus ab agendo. 3. Via or Aditus, which contains the other Two, and a Cart-Way. This is either via Regia, which is common to all Men, or communis Strata, belonging to a City or Town, or between

Neighbours and Neighbours.

If Lesse W. bring his Goods into the tent House, and the Lessor oult him, he shall not have free Entry, &c. to carry away the e; I same; so the Executors of one seis'd of an or house in Fee, or Tail, shall have free Entry, W. &c. to carry away the Testator's Goods, man, and what Time shall be reasonable for a tarrying off the Goods the Justices shall dend the termine according to their Discretion. Hu

A Cottage is a little House without Land. If one have a House near mine, which he fuffers to be fo ruinous, that it is like to fall on mine, I may have a Writ & Domo reparanda against him. But a Pracipe lies not de Domo, but de Messuagio.

If a Man make a Deed of Feoffment, and deliver it, but do not give Seisin, he to whom it is made may occupy the Land, at

the Will of him that made it.

No Action lies against Lessee W. for permissive Waste, but if he be guilty of voluntary Waste, Trespass quare vi, Gc. lis against him; for taking such Power on bim so much concerns the Freehold, that it amounts to a Determination of his Will So if he to whom I lend my Cattel, kill them, I may have Trespass or Trover against him. There are no Accessaries in Trespassor Treason, but all are Principals.

If Lessee W. grant over his Estate, and the Grantee enter, he is a Diss'or; for tho' the Grant be void, it amounts to a Determination of the Leslee's W. inasmuch as by it h claims a Power inconsistent with a Lease W.

Lessor W. may reserve a yearly Rent, and have an Action of Debt, or distrein for it for it is diffreinable of common Right, the it be not Rent-service for want of Fealty. But if the Lessor impound the Distress on the Ground lett, this determines his Will.

Ten't W. is always by Right; Ten't at Sufferance comes in by lawful Demise, and holds over by Wrong; fuch a one in Judg tain I ment of Law has a bare Possession, and the ments the Writ ad terminum qui prateriit, which, the Lo being

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being a real Action, supposeth him Ten't of the Freehold, lay against him, this is rather by Admission of the Demand't than for any Freehold that is in him. As if Ten't T. of Rent grant the fame in Fee, and die, the Heir may bring a Formedon, and admit himfelf out of Possession.

No one can be Ten't by Sufferance against K. but his Ten't holding over is an In-

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If Lessor W. die, and Lessee continue in Possession, he is Ten't by Sufferance, and yet the Heir by Admission may have a Mortdancester against him, for by the Lessor's Death the Lease was absolutely determined, and there never was any privity between the Heir and the Lessee; but at Law Trespass or Assize of Novel Diss'in would not lie against any Ten't y Sufferance, because these Actions suppose a Wrong done to an actual Possession. But now by 6 Annæ 18. Guardians, Trustees, or Husbands seis'd in Right of their Wives, or Ten'ts put autre Vie, holding over without Consent of the Persons intitled, Shall be adjudg'd Trespassers. But Guardian holding over is not Ten't at Sufferance, but an Abator, against whom Mortdancester lies, because his particular Estate was created by Act of Law.

## Of Ten't by Copy.

TEnant by Copy, is where there is a Mannor, in which Time out of Mind certhe ments in Fee, T. or L. &c. at the Will of the Lord, according to the Custom of the Man-

Mannor. Such Ten'ts hold by Copy of Court-Roll, but no other Ten'ts hold by Copy. Bracton calls thein Villanos Sockmanos, because, tho' Free, they hold by base

Tenure, by doing of Villein Services.

A Court Baron holden out of the Mannor is void; but if a Man be Lord of two or three Mannors, and there be a Custom to hold a Court at one for 'em all, fuch Courts are by Custom good. This Court is of two Natures, the 1st is by Common Law, and call'd the Freeman's Court, or Court Baron, and of this the Suitors are Judges, and the Steward is Register, and this may be kept from three Weeks to three Weeks. The 2d is a Customary Court, and concerns Copyholders, of which the Lord or his Steward is Judge; as the first can't be without Freeholders, so this can't be without Copyholders. A Court Baron may be of this double Nature, and then the Roll contains Matters concerning both.

Any one that is lawful Lord for the Time, tho' Ten't at Will only, may make voluntary Grants of ancient Copyholds that come into his Hands, and fuch Grants shall bind him that has the Freehold and Inheritance. For the Estate of a Copyholder mane depends upon the Custom, which is not the less strong for the Weakness of the Lord's Estate. Sine, of Diss'ors, &c. having deseasable Titles, may make Admittances, for it would be hard that Deed the Diss'ees neglect to recover his Right, should be hard that bear the Copyholder of his Power to transfer his entire Estate during the Diss'in. But they cannot make voluntary Grants to bind the Diss'ees, suith

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for the Dissors Want of such Power is prejuditial to none but themselves.

If the Lord devise that his Executors hall grant fuch Tenements for Payment of his Debts, they may make good Grants.

ho' they have nothing in the Mannor.

Three Things are requisite in a Custom to make a Copyhold. 1. Time out of Mind. . That the Tenements be within the Mannor. 2. That they have been demised or demisable Time out of Mind.

One may grant a Mannor by Copy acording to Custom, or Underwoods without the Soil, or the Herbage of Lands, and generally any Lands or Tenements, and

whatever concerns them.

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If fuch Ten't alien by Deed, the Lord may enter into the Land as forfeited; but if uch Ten't would alien, he ought accordng to the Cultom to make a Surrender to his Effect: Ad hanc curiam venit A. de B. fursum reddidit in eadem curia unum Messuagii, &c. in manus Domini ad usum C. de D. bared, Gc. & Super boc venit pradict' C. le D. & sepit de Domino in eadem curia Mefuag' prædict' habend' & tenend' fibi & bæred', oc. ad voluntatem Domini secundum consuetud' manerii faciend & reddend inde servitia, &c. rius debita & consueta, & dat Domino pro that has a Right to a Copyhold, may release by beed, or Copy, to one admitted Ten't de facto, for nothing is more favour'd than the quieting of Possessions, and such Release enures not by transferring an Estate, but extinguishing the Right. A Lease Y, made by a

Copyholder forfeits his Estate, but a Deed of Feoffment, or of Demise for Life, with that out Livery, does not, for nothing passe nest thereby; and by the general Custom of the non Realm, a Lease for (a) one Year is no For-end

(a) 9 Rep. 4 Rep. 26.2.

feiture. It is the general Custom of the Realm to der. furrender in Court, or out of it, into the Hands of the Lord, and there is no need in Charles and there is no need in Charles and there is no need in Charles and the Lord by the layer of Court into the Hands of the Lord by the layer Hands of the Reeve, &c.

By Custom a Freehold may pass by Sur ain, ander, without the Lord's Leave, in his fine ourt, and be delivered over to the render, without the Lord's Leave, in his Court, and be delivered over to the Feofie Whi

by the Bailiff.

The Surrender to the Lord expresses at Estate, for he is but an Instrument, and implement of the Lord expresses of Control of the Limitation of the Vision Surrenderer. If the Limitation be general their cesturque Use takes but for Life, and the rote Rev'n remains in the Surrenderer, if he was no control of the Con

grant the Land to A. B. accordingly, the Effat tion of the first Copyholder is determined, and making 229.

Rev'n remains in him.

A Copyholder being a Jointenant, sur renders out of Court his Part into the salm.
Lord's Hands, according to the Custom, to the Use of his Will, and dies, and this is ail, presented at the next Court, his Devise mable shall be admitted, for by the Surrender them E Jointure was severed, and the Estate passe sed to the Lord on a Condition subsequent y an

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that the Surrender were presented at the affect next Court. If Leffee L. T. or W. of a Man-th nor take a Surrender, and his Estate be for ended before Admittance, the Lessor is bound to admit according to the Surren-

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for ended before Admittance, the Lessor is bound to admit according to the Surrential der.

the A Fine may be due by Custom on every did Change of the Ten't, whether by Act of God in the Lord by Act of God; but Custom to whe Lord by Act of God; but Custom to whe Lord by Act of God; but Custom to whe we it on Change by Demise of the Lord, it is void. Fines may be certain, or uncersum, but if the Lord set an unreasonable ine, the Ten't is not bound to pay it: whether it be reasonable or no the Judges hall determine.

Some Copyholders shall not implead nor be an impleaded in the K.'s Courts, by the K.'s it wits, for their Tenements, but shall make heral heir Plaint in the Lord's Court, and make did to totestation to follow it in the Nature of the M.'s Writs, as Formedon, Assize, which is the Lord by Peters and the set of the Lord by Peters and the set of the Lord by the general Custom of the marranted by the general Custom of the marranted by the general Custom of the set of the salm.

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Mannors, in which fuch Custom has not been used; for if it should, it would be preju dicial to the Lord in preventing his Fine for Alienation, &c. It is no Proof of fuch Cufrom, that Lands have been granted by Copy to many, and the Heirs of their Bodies, but if a Rem'r have been limited and enjoy'd or the Issue have avoided his Ancestori Alienation, fuch are good Proofs of an Estate Tail. As Copyhold by Custom may be intail'd, the same by like Custom, by Surrender, may be cut off. Copyholder do ing his Services, being ejected by the Lord shall have an Action of Trespais, for key as well an Inheritor to have his Land at cording to Custom, as he that has a Free hold at Common Law.

# Of Ten't by Verge.

Copyholder, so call'd, because who he surrenders to the Lord's Hands to the Use of another, he delivers a Verge or Rotto the Steward, and he who shall have the Land takes it up in Court, and his taking is Inrolled, and the Steward delivers the him the same Rod, or another, in the Namof Seisin of the Land.

A Steward may be retain'd to keep Cour Leet, or Baron, without Deed, which Re teiner shall continue till he be discharge The Lord may admit out of the Cour

and out of the Mannor alfo.

In some Mannors there is a Custom, the a Copyholder, out of Court, may surrend

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to the Bailiff, &c. to the Use of another, who shall have the Land in F. T. or L. and that this shall be presented the next Court; and if it be not then presented it is void.

Tho' a Copyholder have an Inheritance according to the Custom of the Mannor, yet inasmuch as he has no Freehold at Common Law, he is called Ten't by base Tenure. If a Man lett Land to A. which is not in a Mannor wherein such Custom has been used, to have and to hold to him and his Heirs at the Will of the Lessor, these Words his Heirs] are void, and if he die, and his Heir enter, an Action of Trespass quare vi, be. lies against him.

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If there be no Custom to the Contrary, Waste permissive or voluntary forfeits a Copyhold.

A Copyholder shall do Fealty, but Lessee W. shall not.

## Of Homage.

When a Ten't did Homage, he was ungirt, and bareheaded, and kneel'd on ooth his Knees, before the Lord Sitting, and held up his Hands together between the Lord's Hands, and faid thus; 'I become your Man from this Day forwards of Life and Limb, and of earthly Worship, and shall be True and Faithful to you, and bear you Faith, for the Tenements which I claim to hold of you, saving the Faith that I owe to our Sovereign Lord the K.' and then the Lord so Sitting kis'd him.

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#### Of Homage.

All Lands in England in Subjects Hands, are holden of some Lord by some Service, and were originally derived from the Crown, therefore K. is Lord mediate or immediate of them all.

One under 21 Years might do Homage, but it feems that he can't do Fealty, because he can take no Oath till the Age of 21, except that of Allegiance which he may

take at 12.

An Ecclesiastical Person doing Hemage, should not say, I become your Man, of for he profess'd himself to be only the Man of God, but he should say thus, 'I do 'Homage to you, and I shall be True and

Faithful to you, &c.

A Feme Sole doing it, should not say, I become your Woman, for its not convenient for her to say so to any but her Husband, but she should say, 'I do you Homage, and 'shall be True, &c.' Husband and Wise, before Issue had, should jointly do Homage for her Land, and the Husband should speak the Words, and the Lord should kise 'em both: So in doing Fealty, both shall ay their Hands on the Book, he shall speak the Words, and both shall kiss the Book.

The Ten't ought to express for what Lands he did the Homage. If he held other Lands of other Lords by Homage, he should say in the End of his Homage done to one of them, 'Saving the Faith which I owe to our Lord the King, and to my

other Lords.

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None should do Homage but such as had State in Fee or Tail in their own Right or nothers, for it was a Maxim, That he that ad a State but for L. should neither do nor ke Homage. But Ten't by Curtefy Iniate may not do Homage, or receive it lone in the Right of the Wife, for he not nly has a Title to be Ten't by Curtefy afer the Wife's Death, but he also holds the ee in her Right during her Life. But after er Death he should neither do nor receive t. So Parson, Vicar, &c. should neither o nor receive Homage, for they have but a ualify'd Fee. But Bishop or Abbot might to or receive it in Right of the Bishoprick, oc. for they have an absolute Fee: But a Corporation Aggregate of many Persons capable could not do it, nor receive it. he Fee vests not either jointly, or in Common, in the Persons whereof the Society consists, but in the Body Politick, form'd by Operation of Law from the Persons so united, which is invisible, and exists only in Supposition of Lan, and can do no Act but by Attorney, but Homage must be done and (a) received in (a) Litt. Person. But in the Case above, the Fee vests Sec. 92. in the Bishop, Gc. in his politick Capacity, as much as it does in the Person of a natural Man in his natural Capacity.

Lessee L. or Y. of a Seigniory holden by Kt.'s Service, should have (b) Escuage, (b) Co. L. Ward, Marriage, and Relief of the Ten'ts, 73. b. tho' he could not receive Homage, and should in Avoury suppose that the Ten't

died in his Fealty.

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If several Parceners held of K. in Capia, and were all within Age, and in Ward to K. the Eldest alone should do Homage for all; but if they were all of full Age, all should do it to K. But where the Tenur was of a Subject, the Eldest only should do it; but after Partition, every one should do it, for they have not one, but several Inheritances. Notwithstanding, the Eldest had done Homage for all the Sisters, yet is any of them had made Fcossment of he Part, the Feossee should do it, for a Feossement is a Partition in Law, and Ten'ts in Common do several Services. And the Feossee, of what Part soever holden by Homage, was bound to do it.

Jointenants should do Homage and Felty jointly: And he that did Homage to on Jointenant, or Parcener of Seigniory, wa

excus'd against the other.

If a Ten't, from whom Homage was due, had made a Feoffment, he should not do Homage, for tho' he be supposed to be Ten't as to the Lord's Avowry, (a) until the Feoffee become Ten't to the Lord, yet the Feoffees very Ten't, and the very Ten't alone shall do Homage; but Donee in T. tho' he had discontinu'd the Tail, or a Mesne might do Homage, for they are very Ten'ts to their respective Lords, tho' they are not Ten'ts of the Land.

Where Homage was part of the Tenure, it was prefumed that the Land was holden by Kt.'s Service, if the Contrary were not

prov'd.

(a) Litt. Sec. 454. apik,

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By Custom, the Heir of one that held by omage only should be in Ward.
By 12 Ca. 2. 24. This Tenure is abolish'd.

### Of Fealty.

Ealty, in Latin Fidelitas, was at Law incident to Homage, he that does it shall y his right Hand on a Book, and fay thus: Know ye this, my Lord, that I shall be Faithful and True to you, and Faith to you bear, for the Lands that I claim to hold of you, and that I shall lawfully do to you the Customs and Services which I ought to do at the Terms affign'd. So help me God.' And he shall kiss the Book. But to Oath should be taken by one in doing Homage to his Lord, because no Subject shall be sworn to another, to become his Man of life and Limb, but to K. only; and that is all'd the Oath of Allegiance, or Homaium Ligeum.

A Steward may take Fealty, but Homage

could be done to none but the Lord.

The Ten't must do Fealty in his proper Person, for no Man by the Common Law can swear by Attorney.

Fealty shall be done by every Freeholder, and Ten't Y. and it gives a sufficient Seisin

of all manner of Services.

# Of Escuage.

EScuage, in Latin Scutagium, was a Species of Kt.'s Service. Some held by the Service of a whole Kt.'s Fee, some by the Service

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vice of half a Kr.'s Fee: And when the ! made a Voyage Royal into Scotland to full due the Scots, he that held by a Kr.'s Fa ought to be with the K. 40 Days well at rayed for the War; he that held by halfi Kt.'s Fee ought to be with him 20, and those that held by more or less, ought tob with him more Days, or fewer, in the fame Proportion. And one might hold to fent K. in his Wars in other Countreys, as well as Scotland.

A Hide or Plow-Land, or fo much as Plow can till, which may contain Wood Meadow, and Pasture, was anciently work 5 Nobles per Annum, and esteemed the Living of a Yeoman; 12 of these made on Kt.'s Fee, which was 201. per Annum; 13 Kt.'s Fees and a half made a Barony, which was 400 Marks per Annum; 20 Kt.'s Fee made an Earldom, which was 400 l. per Ar num; and of latter Days, two Baronies made a Marquisdom, two Earldoms a Dukedoms and 'tis not proper to compute what shall be a fufficient Livelihood of fuch Persons from the Quantity of the Land, but rather from the Value of it.

By Magna Charta 2. The Relief of a K. and all above him that were Noble, was the 4th Part of their yearly Revenue. e. & That of a Kt. was 5 1. of a Baron 100 Marks, of an Earl 100% and by the Equity of this Statute, Marquisdoms and Duke he V doms which have been created fince, were

within the fame Rule.

A Voyage Royal is not only when the King goes in Person to War, but likewik

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then his Lieutenant, or Lieutenant's Deuty goes. The Judges, not the Marshal, hall determine what is a Voyage Royal. there is a Voyage Royal of Peace, as when he King's Daughter goes beyond Sea to e married, but this is not here spoken f.

Ten't by Cornage, tho' that were Kt.'s ervice, paid no Escuage, for that was paid y those only that held to go with the King

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Sir R. R. held by Serjeanty, to be the K's fore Footman when he went into Gafthen the King went to Gascoin, to make

Var, was Kt.'s Service.

If the Lord himself went not, he should ay Escuage, but his Ten'ts were excus'd, r be should have no Benefit by the Default of hers, who was guilty of the like himself. Ten't lefnes, and one Jointenant going excus'd Co.L.70.b. I the rest, for the Service originally reserved

the Tenure was perform'd.

Magna Charta fays, that no one shall be istrain'd for Castle-guard, si ipse eam facere olnerit in propria Persona sua vel per alium prom hominem faciet, si ipse eam facere non posest opter rationabilem Causam. This was declauity panner, if Ten't by Escuage sent a Man to uke he War, he needed not go himself; and there the Act says propter rationabilem Caum, yet the Cause was neither Material nor fluable, but it should be left to the Tent's Difcre-

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Difcretion, for the End of the Service wa the Defence of the Realm, and there wen to many just Excuses, that it would be dangerous, and tend to the Hindrance of the Service, if they should be issuable, of multa in jure communi contra rationem difatandi pro communi utilitate introducta sunt. Every Bishop has a Barony holden of K

in Capite, and should do Homage, and find a Man for the War, or pay Escuage, but his Successor should never be in Ward; no should he pay Relief (unless he were Co.L.84. 2. bound to pay it by Grant or Prescription); yet if the Land had afterwards been convey'd to a Natural Man and his Heirs, his Heir should be in Ward, or pay Relief, of

cessante enim ratione legis cessat ipsa Lex. In the Time of Sir W. H. Chief Justices 71.

the Common Pleas, it was demurr'd in Law Whether the 40 Days should be reckond from the Day when the Army was mutterd or from the Time when the King first a thio tred into the Forreign Nation. But it seem or se they shall be reckon'd from the latter, in as p

then the War begins.

Justices of the Common Pleas, are called ys, Justiciarii de Banco, because they sit in the ePi Seat of Justice as in a certain Place, and Writs returnable in that Court are, Corn of Justiciariis Nostris apud Westmon. or som other certain Place. But the Court of Kinch Bench is so called, because the King and ently sate there in Person, and all Write I seturnable there are, Coram nobis ubicunque succession sin Anglià. And all Records the Notae stilled. Coram Rege. are Stiled, Coram Rege.

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, his , Oa As there is no Issue on the Fact, so there no Demurrer in Law, but when it is n'd between the Parties.

If the Court be equally divided, or conve great Doubt, they may adjourn a use into the Exchequer-Chamber, where shall be argued by all the Judges, and if ey be equally divided, it shall by 14 Ed. s. be decided at the next Parliament, by Prelate, two Earls, and two Barons, mmission'd by K. And if they can't deterne it, the House of Lords shall. See the etute.

He that demurs, confesses all Facts which

well pleaded. When there is an Issue for Part, and Deurrer for Part, the Demurrer shall be first iced cided, but the Court on Discretion may the Issue first.

Sometimes one may plead special Matter, der'd conclude with Demurrer, as in an stion of Trespass by J. S. for taking his seem orse, the Descendant pleads in Bar, that he r, he is posses'd till disposses'd by J. S. who we him to the Plaintist: The Plaintist The Plaintiff

ve him to the Plaintiff: The Plaintiff ralled vs, that J. S. nam'd in the Bar, and J. S. Itlei vs. Plaintiff, are one Perion, and to the Bar murs: This is good, for without it he Corn it demur.

from There is also Demurrer to Evidence, finish none can refuse to join in, except and but in his Case the Court may direct Write: Jury to find the (a) whole special (a) Dy 53.

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Notwithstanding, Escuage were due to Lord by Tenure, yet inasmuch as it

Lord by Tenure, yet inalmuch as it concern d

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concern'd fo great a Number of the Subject of the Realm, it could neither be affest nor diffrein'd for by K. or any other Lond till the Parliament had ascertain'd how much every one that held by a whole Ki Fee, or half a Kt.'s Fee, Gc. that was m with K. by himself, or some other, should pay to his Lord for Escuage. If the Tell died in the Hoft, no Escuage could be de

Escuage has not been affes'd since the

Reign of Ed. 2.

Some held by Custom to pay but the Moiety, or the fourth Part, of the Suma which Escuage was affels'd by Parliament and because the Escuage which they should pay was uncertain, they held by Kt.'s & vice, but he that held by Escuage certain i. e. to pay his Lord a certain Sum for it, a what Rate soever the Parliament affess'd held in Socage. If one speak generally a Escuage, it shall be intended of Escuagein certain, because that is the worthiest Sense To a Tenure in Capite, being spoken of gent rally, is understood to mean a Tenure of I fecundum excellentiam, tho' ex vi Termini, may fignify any Tenure in gross.

The Lords of whom Lands were holde by Escuage should have it when affeist for the Lands at first came from the Lord and it is intended that they were given them to the Ten'ts, to defend them, as wd 6. 1 as the King. And the Lords might diffred for it, or have a Writ to the Sheriff to let it for them; but of fuch Ten'ts as held of the mil King by Escuage, that went not to the Wat

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ar, K. should have it, tho' they held of Mannor which he had in Ward, or by lot as on the Vacation of a Bishoprick. When the Lord distrein'd for Escuage so Kis es'd, if the Ten't would aver that he as with the King all the Days requir'd, would be tried by the Certificate of the arshal of the King's Host, under his Seal, at to the Justices.

In six Cases the Tryal shall be by Certifate.

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ate.

It the 1. Whether one were with K. all the me that he ought, should be tried by ment a Marshal's Certificate, as is aforesaid.

So atlawry, that the Descend't was at Burdental in K.'s Service, under the Mayor of it, i rdeaux, this (a) should be tryed by the said (a) 2 E. 4.

Sidit ayor's Certificate; but this is to be undertand if the said Town was Part of K.'s Dogen mons.

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Senfe 3. Customs of London shall be certified by gene Mayor and Aldermen, by the Mouth of Recorder.

4. Whether one have the Privilege of a tizen, or be a Foreigner, shall be tryed the Certificate of the Sheriffs.

Records shall be tryed by Certificate the Judges in whole Custody they

s wd 6. Excommunication, general Bastardy, of the regularly to be tryed by the Ordinary's of the rificate.

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An Appeal of Death out of the Rel may, by the 1 H. 4. 14. be brought be the Constable, and Marshal, whose & tence is upon Testimony of Witnesse, Combat. This was so resolved in Sir Fi cis Drake's Case, sed Regina noluit constitu Constabularium, & ideo dormivit appelle Some fay, that this Statute extends to Case of him that dies in England of a mon Wound given out of the Realm, for it not punishable at Common Law.

By 12 Ca. 2. 24. Escuage was abolish'd.

### Of Knights Service.

IF Ten't by Kt.'s Service had died, hish Male being under the Age of 21 Ya the Lord should have had the Land hold of him till fuch Heir had arriv'd to t Age, because till then he was not intend to be able to do fuch Service, and t Judges ought to adjudge according to common Intendment of the Law. The Co.L.78. b. the Law intends that a Parson is Resident on his Benefice, unless the Contrary prov'd, and that one Part of a Mannor of the same Nature of the rest, and that Will is not made by Collusion, Oc. 1 that Neighbours are privy to one anoth Actions, and that Things are fairly do when it stands indifferent whether the were fo or no, Ge. and the Judges ought to adjudge otherwise.

And if an Heir Male were unmarried his Ancestor's Death, the Lord should be had the Ward and Marriage of him.

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But if an Heir Female at her Ancestor's eath were fourteen Years old, the Lord hould not have had the Ward of her at all, ecause she might have a Husband able to o Kt.'s Service.

If an Heir Female were unmarried, and nder 14 at her Ancestor's Death, the Lord hould have had the Land till she were 16. W. 1. 22. to tender convenable Marriage her, and if the Lord had died within the vo Years, the Law gave the same Interest his Executors and Administrators. But the Lord had granted the Wardship of e Body of fuch Heir Female, and kept the and himself, neither the Grantee nor Co. L. 78, rantor should have had the Benefit of the 79. wo Years: Not the Grantee, because he id nothing to do with the Land granted; ot the Grantor, because he could not tender arriage after he had granted over the lard of the Body. And when the Lord d married fuch Heir Female within the vo Years, The and her Husband might ve enter'd.

By the faid Act, if she had resus'd the ord's Offer, he should have holden the and till her Age of 21; and farther, till he d levy'd the Value of the Marriage. Tentrof Marriage made to her before she was by a Lord who might have had the Bestit of the two Years, was void. If the ord had tendred no Marriage to her in the to Years, he lost the Value of it, by the press Words of the Act. And notwith-landing such Heir Female were under 14, yet she were married in her Ancestor's Time,

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the Lord should have had the Wardship the Land no longer than while the was us

der 14.

Wardship was due to the Lord in rese of the Tenure, therefore if the Lord had no leas'd his Seigniory to his Ward, or the Seigniory had descended to him, he should have been out of Ward, for cessante cal cessat Effectus, as it Conusee release Debts to Conusor being taken in Exem tion, he discharges the Execution.

After the Statute of Wills, if a Man ha by Act executed, disposed of all his Kt.'s & vice Land for the Advancement of his Will Ge. the Heir should have been barr'd at the Whole, and yet have been in Ward & the 3d Part, by the express Words of the la Statute. But if such Ten't had made a D vise of all his Kt.'s Service Land, it had be wholly void as to a 3d Part, for the faid & tute, which alone makes such Devise gu mentions only a Devise of two Parts of in Land.

If Ten't by Kt.'s Service had made a Fed ment in Fee on Condition, and died, a his Heir had enter'd for a Breach, he should have been in Ward, tho' neither Efter nor Right descended to him, for the La was restor'd to him in Nature of a Desce In like manner, the Heir recovering in a non fuit compos, Formedon in Descender, Rem'r, as Heir, Oc. should have been Ward. So if Ten't T. with a Rem'r in R had discontinued, and the Discontinu had infeoff'd the Heir, he should have be in Ward, for as he was reftor'd to the Title

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he Land as Heir, fo should the Lord to ne Title of the Wardship; and tho' the ncestor died not in the Lord's Homage, et there was Right of Homage.

But the Heir of him that never was Ten't the Lord, should not have been in Vard, as of him that took a Fine fur grant,

nd died before Execution.

The Heir of Feoffee on Condition should ave been in Ward till his Estate were deated on Performance of the Condition. he Heir of Conusor of a Fine executory, hould have been in Ward till the Conu-

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The Lord should have had the Wardship the Body of the Heir of the Diss'ee, and the Diss'or had died seis'd, the Lord hould have had the Ward of the Body of is Heir, and of the Land also. But Q. on the Heir of the Dissor in this Case could be Ward, seeing the Entry of the Heir of the disee being within Age, could not be taken may by the Descent, and it (a) seems that the (a) Co.Lit. ord in his Right might have enter'd on the 207. 2.245. leir of the Diss'or.

The Heir of cesturque Use should have ten in Ward by 4 H.7. 17. and the Heir the Feoffee allo by the Common Law.

If Ten't T. with a Rem'r in Fee, had ade a Feoffment, the Heir of the Feoffce hould have been in Ward, and the Heir of le Feoffor alfo, to the same Lord. But Page, that the Heir of Jach Test T. making Feoffment (bould no be in Ward, till be had cover'd the Land.

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If A. had made a Gift in Tail to B. and B. had infeoff'd C. and died, his He should have been in Ward to A. but if had died, his Heir should have been in Ward to the Lord Paramount, for C. Wa Ten't in Fait to him, and A. could no ayow on C. or his Heir, for the Services du to him, for then it would appear of hi own shewing that the Rev'n was out d him.

If one had holden Lands of K. by M. Service in Capite, or as of the Dutchy of Lancaster within the County Palatine, or of some other certain Honors, (an which K. had as it were by Prescription, his Pro rogative,) K. should not only have had the Ward of the Lands holden of himself, bu also of those which were holden of our And also all other Hereditament Co.L.78. a. as Rents, Annuities, Commons, &c. th

they lay not in Tenure, but if one ha holden of K. by Kt. Service, as of other Honors, or Mannors, K. should only har had the Ward of the Lands holden of him felf.

An Heir who had been in Ward by Ro fon of a Tenure in Capite, when he came Age, must have fued Livery, i. c. to have he the Lands deliver'd to him by K. the Expence which was half a Year's Profit of his Land But if the Heir had been of Ag at his Ancestor's Death, he should has paid for Land in Possession a Year's Profit Vid. Stanf. for the K.'s primer Seifin, and Livery, an Præ, 12,13, for Rev'ns expectant on Freeholds, half Year's Profit. And K. should have had a

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he mean Profits till Tender of Livery were Stanf. Prz. ande, so if a Tender were made, and not 12. a. uly pursued. But the Heir that had been h Ward to K. by Reason of a Tenure of im, as of an Honor, or Mannor, might this full Age have sued an Ouster la main mexitibus, and if he were of sull Age at is Ancestor's Death, he should have paid telief, and not primer Seisin.

If he that held of K. by Socage in Chief ad died, his Heir being of full Age, K. hould have had primer Seisin and Livery may of the Lands so holden, but if the leir were under 14, K. should have had either, because the Custody of his Body and Lands belong'd to the Guardian in So-

There was a General Livery, and a Spevery County where the Heir had Land, nd he must sue out his Writ of Etate proanda, &c. and it concluded the Heir to dey a Tenure found in the Office. If it were ot fued of all that K. ought to have, wheter mention'd in the Office or not, or if te Office or Process whereon it was made, ere insufficient, K. might reseise the whole and, and should be answer'd for the hole Profits. But a special Livery which as of Grace, not of Right, contain'd a ardon, and avoided the faid Dangers, and harges. A Livery being in Nature of a estitution was taken favourably, therefore if were made of a Mannor cum Pertinentiis, included the Advowson Appendant; but tters Patents made of a Mannor, do not

include the Advowson, unless it be mes tioned.

By 2 E. 6. 8. these Things were provided 1. Where an Office is found for K. In that has an Interest for Years, or by Copy, or any Rent, or Profit, of whatsoever Estate out of the Land, shall have them, the they be not found in the Office, in such fort as he should, if no Office had been a all.

2. Where the Heir was found to be a fewer Years than of Truth he was of, he might sue out his etate Probanda at his full Age, but before the Statute, he was concluded.

ded by the Office.

3. Where one was found Heir, that in Truth was not Heir, or where one Person was found Heir in one County, and and ther in another County, the Party grieved had no Remedy at Law to get Livery mult to him, unless he were found Heir also by the or another Office in the same County, and the Vid. Stanf. it was a great Doubt whether it should be true.

Præt. 58. a. which of them were Heir by Interpleader imme 59. a. diately, or at the full Age of him that u found Heir first; but by this Statute the Pan

7 Rep. 44.b. terpleader immediately, so that he had had a

Office found for him also in each County.
4. Where it is untruly found that one is an Ideot, Lunatick, or Dead, such Office may be travers'd.

5. Where an Office finds that one attains ed of Treason, &c. is seis'd of Lands, the Party griev'd may have a Traverse, or Months frans de droit, tho K. be intitl'd by down

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6. If an Office were found by these Vords or the like, quod de quo vel de quibus emmenta Prædicta Tenentur juratores ignoant, or if it found a Tenure of K. per qua rouis ignorant, Ge. the first should not ave been taken for an immediate Tenure of I nor the second for a Tenure in Capite, the out a Melius inquirendum inouted have and warded by Force of the faid Statute, and the Office found thereon had been contrately to the first, it had taken off the Force of the first if it had been as uncertain as enfor a Tenure in Capite, for that was most in the K.'s Advantage. But if it had found a make enter of K. as of a Mannor, per qua Servita, &c. ignorant, it should have been taken for a Tenure by Kt. Service.

The property of K in medicately that was found to be at a policy of K in medicately.

olden of K. immediately, that was holden Pan a Truth of others.

8. A Scire facias on every fuch Traverse and a pult go out against the K.'s Patentee.

The Statute of Marlbridge, which avoidant is Feoffments of Kr. Service Land made by ollusion to an eldest Son, extended not to list in T. or Leases L. made to the Son, with a Rem'r to others in Fee, nor to Feoffments made to the Son jointly with others, or to any Feoffments made for the Address ancement of the Feoffor's Wise, or Chilten, or Payment of his Debts:

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But in all the abovemention'd Cases, the Heir should have been in Ward for his Bo dy, and the 3d Part of the Land, by 32 H. 8. 1. But if Ten't by Kt. Service had made: Feoffment to any of his Sons, bona Fide, for good Consideration, or if the Estate convey'd to fuch Uses had been determin'd in the Father's Life; or the Land fo convey! had been afterwards convey'd away in the Father's Life; or if one had made a Feof. ment to his middle Son in Tail, Rem'ru his younger Sor in Tail, and died, and the Lord had feied the Wardship of the elder Son, and a 3d Part of the Lands, and foth Statute had been once fatisfy'd, and then the middle Brother had died without Iffue, dering the Minority of the Eldeft, by which the Land had remain'd to the Youngel or if a Grandfather, in the Life of the fa ther, had given Lands to any of the fa ther's Sons; or if one had convey'd Land to any of his collateral Blood who was not his Heir Apparent, or to a Bastard; these Cases were out of the faid Statute But if the Grandfather had convey'd Land to the Son after the Father's Death, sud Conveyance had been within the Statute.

If one having none but Socage Land, had convey'd it all to such Uses, and then had purchas'd Capite Land, K. should not have had any of the Socage Land; but if he had made a Devise of the Socage Land, and then had purchas'd Capite Land, and died, K should have had the Wardship of a 3d Part of the whole, for a Devise takes no Effect in

the Death of the Devisor.

79.

If a Male or Female be married infra anos Nubiles, he at 14 or after, the at 12 or fter, may agree or difagree, and they eed not be married again if they then gree, or be divorc'd if they disagree; but ey can't disagree before such Age, and if bey then agree, they can't after disagree : one Party be of the Age of Consent, and he other under it, yet when the Party that as under comes to the Age of Confent, ther of them may disagree.

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If the Lord had once married his Ward. eshould not have had a 2d Marriage of im, tho' the Marriage had been dissolv'd binitio by Disagreement, or Pre-contract. ut if the Ancestor or Ravisher had married he Heir, and the Marriage had afterwards en diffolv'd, the Lord should have had he Marriage of him. If the Heir infra anos Nubiles had been married in his Anceor's Life-time, yet because he might have isagreed, the Lord might have taken him nto his Possession, or have had Ravishment gainst a Detainer. But if he had agreed Age of Consent, neither K. nor Lord hould have had the Marriage of him.

By the Statute of Merton 6. if the Lord isparag'd his Male Ward under 14, he hould have lost the Ward, and the whole rofit thereof should have been converted the Ward's Benefit. The Lord was faid disparage the Heir by marrying him to the Daughter of a Villein, Burgess, one attainted of Pan elony, to a Bastard, or Alien, one wanting land, or Foot, Deform'd, Paralytick, Conumptive, Ge. If a Lease were made to A. for

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L. Rem'r to B. in T. and A. had furrended to B. on Condition, and B. had died and his Heir had been disparag'd, and A had enter'd for Condition broken, and died B.'s Heir being still within Age, he should have been out of Ward, for he claim'd a Heir to one and the same Ancestor; but it Lands had descended to him from another Ancestor, he should have been in Ward at to them. If there had been two Jointenant of a Ward, and one of them had disparaged the Heir, both should have lost the Ward for the Words of the Statute are, that all the Profit, &c. shall be converted to the Use of the Heir.

It seems that no Action could be brought on this Act, because none was ever brought for periculosum existimandum est quod bonorm virorum non comprobatur exemplo. Not that a Statute can be antiquated, but it may be

expounded by non Ule.

The Lord should have had the single Value of the Marriage of the Heir, whether had tender'd to him any Marriage or not, and he should have as much as another had offer'd to him for the same, bona Fide, or so much as it should be found to be worthy lawful Tryal. If the Heir had resus'd the Lord's Tender, and had remain'd unmarried during the Time that he continued in Ward, or if he had married himself before any Tender made to him by the Lord, the Lord should have had but the single Value of the Marriage; but if the Heir had refus'd the Woman tender'd by the Lord and

nd married another against the Lord's Will, he Lord should have had the double Value I the Marriage, by Force of the said Sta-

ute, cap. 6.

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The Lord had two Remedies for these values, viz. an Action, or Power to demin the Land, but he could make use of reither of them till the Heir were of Age. Where the Lord held the Land for the single Value, the Profits were not accounted farcel of the Value, but as a Pledge till the skir paid it: But where the Lord held the land for the double Value, the Profits went in Satisfaction thereof, for the Words of the Statute of Merson, which gave the lorseiture, are, and Dominus teneat terram, it c. done inde percipere posses, Ge.

There never was any Forfeiture of the darriage of an Heir Female: And at Com-

ver her Land after her Age of 14.

Some held by Kt.'s Service, and not by sleunge, as those that held by Cattle-guard, it, to guard some certain Part of the lord's Castle in Time of War, which drew to the Lord Ward and Marriage. And if the Ten't made default in guarding the Castle, the Lord might distrein, and recover Satisfaction in Damages; but the Ten't seeded not to thir till the Lord gave him Warning that the Enemies were coming and tho the Part which he was to defend was certain, yet the Time was not fix'd, is it was in Elouage, and the Ten't should be discharg'd of Castle guard for the Time hat he serv'd K. in the War.

A Man could not hold of one Lord to guard the Castle of another, therefore if the Lord had granted over his Seigniory, the Castle-guard was gone, for the Grantee had not the Castle; so if a Ten't hold by Suit of Court, &c. and the Lord grant over the Services, the Suit is gone, because the Graptee has not the Mannor. But tho' the G. file were ruin'd, the Tenure remain'd.

Anciently all Earls and Barons had Earldoms and Baronies holden of K. in Capite, which K. would not suffer to be divided, and by Magna Charta, they should pay Vid. Supre, for Relief the fourth Part of their Revenue; but of later Days they have been made without such Earldoms or Baronies, and therefore such are not within that Statute; for as a Kt. paid not Relief unless he had a Kt.'s Fee, so neither did an Earl, &c. as such

unless he had an Earldom, Oc.

The Lord could not waive the Wardship, and have Relief in lieu of it. But the other Lords of whom K.'s Capite Ward held other Lands, should have Relief, for they could not have the Wardship of him. But in fome Case, the Lord might have both Relief and Wardship of the same Heir, as if A had holden two Mannors of B. by Kt.'s Sa vice, and had been diffeis'd of one, and Diss'or had died seis'd thereof, and the Ten't had died seis'd of the other, his Hen being within Age, the Lord should have had the Wardship of that Mannor, and i the Heir being of Age had aftewards reco ver'd the other, he should have had Relie of him for that;

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If Land holden by Kt.'s Service had descended to the Son from an Ancestor of his Mother's Side, his Father should have had the Marriage of him, and the Lord the Ward of the Land, for the Father alone while he lives shall have the Marriage of his Son being his Heir Apparent, or of his Daughter being Heir Apparent fo long as the continues to. But an Alien, or one attainted of Felony, Gc. can't have this Privilege, because he can't have an Heir Apparent. Nor should the Mother, or any collateral Ancestor, have had the Custody of their Heir Apparent, before the Lord, for tho' they may have an Action of Trespass, quare consanguineum & haredem rapuit, yet that lies only against a Stranger, and not against Guardian in Chivalry. If there had been Lord and Feme Ten't by Kt.'s Service, and the had made a Feoffment on Cohdition, and had married the Lord, and had Iffue, and died, and the Iffue had enter'd for a Breach of the Condition, and the Lord had feis'd the Land as Guardian, and died, his Executors should not have had the Ward of the Body of the Heir, for the Lord had it not as Lord, but as Father; nor could he waive his Right as Father.

The Lord that had a Wardship in Right of his Seigniory, was called Guardian in Right in Chivalry. The Lord's Grantee in Possession of the Wardship, was call'd Guardian in Deed.

Notwithstanding an Interest in the Body of a Man be a Thing that properly lies in

Grant, yet the Wardship of the Body might be granted without Deed, because it was an Original Chattel, i. c. a new Interest in a Thing wherein no one had an Estate before, created by Law without Deed, but the Wardship of an Advowson, Oc. was not grantable without Deed, because it was not an Original Chattel, but was deriv'd out of the Inheritance of a Thing lying in Grant. A Leafe 7. made by a Corporation Aggregate might at Law be affigued without Deed, tho' it could not be made without Deed. For the' such Corporation cannot make an Estate without Deed, yet an Estate when made by them has the same Properties with those of the like Nature made by others.

By 12 Ca. 2. 24. all Tenures by Kt.'s Service, and Socage in Capite are tuxn'd into common Socnee, and discharg'd of Homage, Livery, primer Seifin, Wardship, &c. which were at Law incident to Such Tenures, & Aids pur file

marrier, & pur faire fitz Chivalier.

And by the faid Statute, any Father, tho' he be under the Age of 21 Years, may by Act executed, or by Will in writing, dispose of the Tuition of his Children fo long as they shall be under the Age of 21 Years to fach Persons, (except Popish Recusants,) and in such manner ash Shall think fit.

## Of Socage.

T Enure in Socage, is where the Ten't holds of his Lord by certain Service, as Fealty and certain Rent, for all manner of Services. And at this Day every temporal To

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5 50 unt ure of a common Person is in Socage. For io, in a Ariet Sence, it only fignifies that in hich the Service of the Plough was origially referv'd, yet largely taken it compreends all others that have the like Effects nd Incidents; as if a Rose, Rent, or the oing the Duties of an Office were Origially referv'd; and at Law every temporal enure of a Subject, that was not Kr.'s Serce, was Socage.

Socagium idem est quod servitium Soca, i. e. Plough, and anciently fuch Ten'ts ought come with their Ploughs, for certain ays in the Year, to plough and fow the ord's Demefnes, or do other Works of usbandry. And afterwards fuch Services ere chang'd into annual Rent, and yet the

lame of Socage remain d.

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Such Change must be before Time of Mefory, for at this Day they can't be chang'd y Release, Confirmation, or any other conveyance to long as the Seigntory relains, and in fome Places they still do ach Services with their Ploughs to their ords. all of result do Janonia

Eleuage certain makes Socage. If a Vid. fupra, en't had holden by Homage, Fealty, and 116. lage, vie, by an Helfpenny, when scurge run at 40s. he was Ten't by Soage. 1. Because his Tenure was certain. . The Halfpenny was not paid every time when Elchage was whels'd.

To hold by certain Rent for Caffle-guard Socage, but tho' a Sum in Gross were vountarily paid for it, the Kr.'s Service remain'd;

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main'd; and wherever Ten't ought tod it by himself or another, it was Kt.'s Sq. Vice.

Whenever the Ten't holds of his Lord by Rent, this is Rent Service, because it is a companied with fome corporal Service Fealty at least, in respect whereof the Lord

may diffrein of common Right.

If Ten't in Socage die, his Heir being under 14, whether he be his Issue or Coula Male or Female, the next of Blood to the Heir to whom the Inheritance can't de scend, shall (if the Father appoint no other Guardian, as he may do by 12 Ca. 2. 24.) h Guardian of his Body and Land, till his Age of 14, as if the Land descend from the Father, the Mother, or other next Coula of the Mother's Side shall be Guardian in Socage, & fic & converso, where Land de scends from the Mother. But the Civil Law appoints him to be Guardian that is to inherit next, which our Law fays, is conmittere ovem Lupo. Guardian in Socage shall take the Profit

and render an Account of them to the Heir when he comes to the Age of 14, who that Age may oult the Guardian, and 0 Co.L.90. b. cupy the Land himself. At Law, Executor could not have an Action of Account, no could any, but K. have fuch an Action against them, for Matters of Account he much in Privity between the Parties, the what Allowances ought to be made by the on Custo Party, or what might be alledg'd in discharge is G

the other. But by W. 2. 23, if the Heir nake his Will, (which he may do at his age of 18) his Executors shall have an Action of Account against Guardian in Soage, and by 25 E. 3. 5. Executors of Exeutors may have fuch Action, and by 31 Ed. 3. 11. Administrators, and by 4 & Anna 16. an Action of Account lies against he Executors of a Guardian, Bailiff, or reeiver. The Guardian shall be allow'd his casonable Costs and Expences, in his Acount, and if he marry the Heir under 14. e shall account to him or his Executors for he Value of it, tho' he took nothing; unes he marry him to such Marriage as is much in Value as the Marriage of the leir. If a Ravisher marry the Heir, the

Guardian shall have a Writ of Ravishment Co.L.89.2. f Ward against him, (by (a) the Equity of (a) F. N. B. W. 2. 35.) and shall recover the Value of 139. I.

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The Grandmother recovering the Heir in Writ of Ravishment of Ward against the tepmother's Husband, was bound by Rule f Court, to find Pledges pro nutritura haedis, & custodia evidentiarum.

If the Guardian marry the Heir after 14, eshall not account for it, for the Heir at

hat Age is out of his Custody.

If a Man die seis'd of a Rent Charge, common, or such like Inheritances which is not in Tenure, (and dispose not of the Custody of his Child) the Heir may chuse is Guardian; if he be so young that he can make 88.

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make no Choice, it is most fit that his her Cousin to whom the Inheritance can't descend, should have the Custody of him, and whoever takes the Rent, Soc. is chargeable in Account But if he have any Socage Land, the Socage Guardian shall take the Rent

Charges, Ge into his Cultody.

If the younger Brother die feis'd in The leaving thue under 14, the Elder, not the middle Brother, thall be his Guardian in Socige, for in equal Degree the Law prelen him. But if Ten't T. have no Brother, " Sifter, and die, leaving Iffue under 14, the next Cousin of the Father's or Mothers Side, that first seites the Heir, shall have the Cultody of him, for the Relation on ball Sides is equal, and no Caufe appears whereful either should be preferr'd, and he that for takes Care of the Heir, shews himself to be mil concern'd for his Interest. But if Donces in Frank-marriage die, their Issue being under 14, the next Coufin of the Part of the Do nee that was the Cause of the Gift, (being not Inheritable to the Donor's Reving ( have the Cultody. A. feis'd of fome Land as Herr to his Father, and of others as Her to his Mother, dies, leaving life under 14: The next Coufin of either Side, that fitt feries the Body of the Heir, shall have the Cultody of him, and the next Coulan of the Father's Pape finall chier into the Landsof the Mother's Part, of he dicine cafe. If Brother punchase Land in Fee, and die until Iffue, and the Land descend to the younger Bro ther, being under 24, Q. who shall be his GHAT Guardian in Socage, feeing whoever is of the Blood of the younger Brother, must also be of he Blood of the Elder, and confequently capable of Inheriting.

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If A be Guardian in Socage of B. under

4, he shall be Guardian in Socage of ano-Register
her Infant whom B. ought to be Guardian of 162. a.

4 being his next Cousin, pur Cause de gard,
and an Action of Account lies against
him.

An Infant, Ideot, Lunatick, non compos, one Blind and Dumb, Deaf and Dumb, or Leper removed, can't be Socage Guardian. Nor any to whom the Inheritance may possibly descend, therefore the elder Brother of the half Blood shall not be Guardian in locage to the younger Brother being Heir othe Father of Burgh English Lands.

The Father being Guardian in Socage, hall Account with the Son for the Profits, is otherwise it would be more for the Son's Advanage to have another for his Guardian than his Father; but where the Father had the Custody of the Body of his Heir Apparent n respect of his natural Right, he should Vid. supramender no Account to the Heir, for what the 131-father might receive on such Account, would therwise have belong'd not to the Heir, but to be Guardian by Ki's Service.

Guardians are either by Common Law,

statute, or Custom.

By Common Law, there are four kinds of Guardians, viz. Guardian in Chivalry, ocage, Nature, and Nurture.

There are two kinds of Guardians by statute. 1. By 3 & 4 Ph. & M. 8. the Fa-

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3 Rep. 39.2. ther, or Mother, (after the Father's Death) or any other appointed by the Father by his last Will or Act in his Life, shall have the Custody of Female Children under the Age of 16, and no one shall take them and without Confent of Such Persons, under severe Pt. nalties in the said Act mention'd, and by 12

Vid. supra, Ca. 2. 24. Fathers may appoint Guardians for 132. any of their Children.

> 3. There are also Guardians by Cufrom, as of Orphans by Custom of the City of London.

Guardianship in Socage is not forseited by Attainder, nor shall Husband of Guardian in Socage have the Guardianship by Survivor; for such Guardians have nothing in their own Benefit, but are only intrusted to me nage the Land of the Heir, for his Benefit, with that Affection which cannot be expelled from Strangers. Guardian in Socage cannot present to a Benefice, because he cannot

Vid. sup.25. Account for it, and if he should have Pour to present, he might be tempted to make an Al-

vantage of it. But some (a) have said, that f (a) 2 Cro. the Heir be within the Age of Discretion, the 99.

Guardian may present. 2 Cro. 99.

Those Words of the Statute of Manbridge 17, that the Guardian shall answer the Heir cum ad Legitimam atatem pervenrit, are understood secundum subject am materiam of his Age of 14, for that is his lawful Age which gives a Capias in Account again of Gu Bailiffs, nor W. 2. 11. which appoints Audithors to take Accounts of Bailiffs, &c. experts tend to Guardian in Socage.

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If a Guardian in Socage, Bailiff, Receier, or Factor, be robb'd without their Deault, they shall be discharg'd so far on heir Account; so shall not a Carrier, for he has his Hire. If one take Goods to be afely kept, or to be kept for another, and e robbid, he shall answer for them. But be Contrary has been of late resolv'd, for it ems unreasonable that he who, without any Gratuity, does a friendly Office to another, and s in no Default, Should be a Sufferer for his Kindness. If Goods pledged to a Man be ol'n from him, he shall not answer for hem, for he had a special Property in them, nd can't be suspected of want of taking Care sthem; but if he had refus'd to let them e redeem'd, he should have answer'd for hem. If A. leave a Chest with B. and ike away the Key, and acquaint not B. ith what is in it, and the Chest be stol'n, I shall not be charg'd, because A. did ot trust him with it, as this Case is.

Whoever occupies the Heirs Land, as Soage Guardian, shall render an Account to he Heir, and it is no Plea in such Action o say that he is not Prochein Amy. If Guar-

ian in Socage occupy the Land from the wer deir's Age of 14 till 21, he shall be afterards charg'd as Bailiff, not as Guardian.
On the Death of Guardian by Kt.'s SerAge ice, the Executors should have had the
Vardship of the Heir, but not the Executors
sind of Guardian in Socage, but the next Friend
Auof the Heir shall have the Ward of him,
executors in Chivalry had the expr the Guardian in Chivalry had the Vardship to his own Use, but the Guar90.

91.

dian in Socage has it to the Use of the Heir. A. Bishop's Executors should have had a Kr.'s Service Ward, which he had in Right of his Bishoprick, tho' he had dy'd before Seisure, for he had an Interest vested in him. If a Bishop die before he has fill'd up an Avoidance of a Church, K. Shall present: fo if a Man had holden an Advowlon of I. by Kt.'s Service, and the Church had be come void, and he had died, his Heir being within Age; for the Right of presenting to a void Church is in Nature of a Chose in Action, and is rather a Trust than an Interest, but wherethe Tenure is of a Subject, the Executors shall prefent: For tho' the Law make fuch a Confruction in favour of K. who is always presum'd to act nin the greatest Honour, yet all Subjects stand in equal Degree.

Every Ten't in Socage, and every Ten't by Kt.'s Service, (before 12 Car. 2. 24.) was bound to give the Lord Aid for the making of his ell ell Son a Knight, at the Age of 15 Years, and warrying of his Daughter, at the Age of 7.

After the Death of Ten't in Socage, his Heir, of what Age soever he be, shall pay to the Lord for Relief as much as the annual Rent amounts to, whether it were referred in Money, or any other Thing of English or Foreign Growth, or Manual Cture; and if he hold by ten Shillings payable every 2 or 3 Years, he shall pay ten Shillings for Relief: And it is due to the Lord presently, and he may distrein for it forthwith after the Death of the Ten't.

If the Ten't hold by the Rent of ten Shillings or a Pair of Spurs, he may pay which

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of them he will for Rent, and fo may his Heir for Relief. But if the Ten't be not ready to pay one or the other when he bught for Rent, or if the Heir be not ready upon the Land prefently, (i. e. as foon as conveniently he may,) after the Death of his Ancestor, to pay the one or the other for Relief, the Lord may distrein for which of them he pleases. But if either of them be tender'd according to Law, and there be one on the Lord's Part ready to receive it, he Lord can afterwards distrein for that only which was tender'd, but for that he my distrein whenever he pleases.

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If the Ten't hold by the Rent of ten hillings, or doing fo many Days Work at larvelt, or attending on the Lord at Christras, ten Shillings must be paid for Relief, or of Corporal Work or Labour no Relief due. Tet it has been said, that the Service of 2 Roll. A. oing so many days Work at Harvest may be 515.

oubled, for it is not personal to the Ten't, but my be done by himself, or another, and no parcular Time is prescribed for the doing of it. ut only that it be done within Harvest; but it

pay impossible to double the Ten't's Attendance on interpretation of the Ten't hold of his Lord by a Rose, of the like perishing Fruits of the Earth, which can't be kept, and die at a Time then they are not ripe, the Lord can't distinct for his Relief before the Time when the ythe Courte of Nature they may be ripe, or it are enim spectat natura ordinem.

Too the Ten't doing Fealty, swear to do

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93.

one may hold by Fealty only for all manner of Services, and in that Case, when he has done it, no other Service is due: For every Ten't ought to do some Service to hi Lord, lest in Time it should be forgotten that he holds of him, and fo the Lord might lofe his Escheats, Forseitures, & And inafmuch as Fealty is incident to eve ry temporal Tenure, and the Lord at first would have no other Service, it is Reafor that he should have that.

Every Lessee L. or T. shall do Fealty to the Lestor, for they hold of him, and there can be no Tenure without some Service, because the Service makes the Tenure; but bare Ten't at Will shall not do Fealty, la

he has no certain Estate.

#### Of Frankalmoine.

TEnant in Frankalmoine, is where an E clesiastical Corporation, whether Re gular or Szcular, Sole or Aggregate, hold in Frankalmoine, that is to fay in Lana in libera Eleemofyna: Those Ecclesialtia Persons were called Regular, that lived un der certain Rules, and had vow'd true Ok dience, wilful Poverty, and perpetual Chi tity. Others for Diftinction-fake were al led Sæcular, as Bishops, &c.

England's Ecclesiastical State is divided in to two Provinces, or Arch-Bishoprick The Arch-Bishop of Canterbury is still Metropolitanus, & Primas totius Anglia. In Arch-Bishop of York, Primas Anglia. Th First has under him Rochester his principa Chap

94.

Chaplain, London his Dean, Winchester his Chancellour, and all the others except Tork. hester, Durham, Carlisle, and Man. And very Arch-Bishop, and Bishop, has his Dean and Chapter.

Every Diocese is divided in Arch-Deaonries, whereof there be 60, these into

Deanries, Deanries into Parishes.

Anciently a Man could not alien Land which he had by Descent, but only to God n Frankalmoine, or to one of his Blood in rankmarriage, or to a Servant in Remune-

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Tho' the Covent were dead in Law, and ould only affent unto Acts done to or by he Abbot, yet a Feoffment made to an Abot and Covent and their Successors was ood, and the Fee vested in the Abbot. bbots and Bithops might, at Law, take a ee without Deed, and by the Word Frank Pure Alms, without the Word Succes- Vid. sup. 15. ors; but a Corporation Aggregate of many ersons capable, could never take without eed, tho' they may without the Word accessors.

A Chapter, in Latin Capitulum, in a rge Sense fignifies any Body of Ecclesiasticks, Re- Co. L. 325. lar or Sacular, whose Assent is required to B. e Alts of a Superiour, but strictly it signies Clericorum Congregatio sub uno Decano in celesià Cathedrali. And of this Sort some file vofold, first those translated by Henry 8. the Place of Abbots and Covents, or The tiors and Covents, which were Chapters hile they stood. Secondly, Those founded

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by Henry 8. for his new Bishopricks. The ancient Deans come in by Conge d'Elin and the King giving his Royal Affent, and confirmed by the Bishop; those newly translated, or founded, are Donative, and by the King's Letters Patents are in-Stalled.

None can take a Fee in Frankalmoin. but Ecclesiastical Persons, being Bodies Po-litick, as Bishop, Parson, &c. or Incorp. rate by Letters Patents, or Prescription.

Ten'ts in Frankalmoine were bound of Right to make Prayers for the Souls of the Founders, or Grantors, and their Heir which were dead, and the Prosperity of those which were alive, and the La esteemed such spiritual Services to be bette for the Lords than the doing of any temp ral Services; and for this Cause, and be cause the Word Frankalmoine excludes temporal Services, Ten'ts in Frankalmon

are not bound to do Fealty.

They were faid to be bound of Right t do fuch spiritual Services, because the B clesiastical Law compelled them to do the pirite for want of Remedy and want of Right all one. But late Statutes having alter pirity the manner of Celebration of divine Service hat L if the Ten't do what is now authoriz'd, it ular, sufficient, whether he hold in Franka mon I moine or by particular divine Service, at life the held in Frankalmoine before, he hold in Frankalmoine ftill, for that was the of ginal Tenure, and every one is Party, at lone, ment. for want of Remedy and want of Right

If Ten'ts in Frankalmoine neglected to fay fuch Masses, Ge. they could not be difrein'd for such Default, for every Diffress must be for something certain; but in Frankalmoine, nothing in certain is reerv'd; and in Avowry, Damages cannot be ecovered for what is neither Certain, nor an be reduced to Certainty, for oporter quod terta res deducatur in judicium; but to hold by Shearing all the Lord's Sheep depasturing n the Lord's Mannor, is certain enough by Reference to the Mannor, which is cerain.

But the Lord ought to complain of fuch Default to the Ordinary, or to the Visiter, if any were appointed by the Foundation,) and they ought to punish the Fault, and provide against it for the future. Where he K. is Founder, regularly the hall not be Visiter, but the Lord Chancelor, unless a special Visiter be appointed

on the Foundation.

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There are two Jurisdictions in England, ne of which is Ecclesiastical, limited to her piritual and particular Cases, which has he conusance of Matters where the Right is her piritual, and there is Remedy only by

it law. The other is Temporal and Service law.

If the spiritual Tenure be by certain dinks in Service especially express d, as to chant last earliest a Day in Alms; this is not Frankalloine, for in that nothing certain is meanaged, but this is called Tenure by divine

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Service, and he that holds by it shall do Fealty, and if the Service be neglected the Lord shall distrein, and in his Avowry new ver Damages, and if Issue be taken on the Performance of it, the Jury shall try it, in assuuch as the Service is certain, tho' it is Spiritual, and wherever Common or Status Law give Remedy in foro Saculari, the Conusance belongs to the King's temporal Courts, whether the Matter be Spiritual of Temporal, unless the same Statute, which gives a Remedy in the Temporal Courts are the Jurisdiction of the Ecclesiastic Courts.

Fealty is incident to all Services, for

which the Lord may distrein.

Tenure in Frankalmoine is so free, that as it is said, a Rent reserved on a Gift of Land to hold by such Tenure is void; and no one that holds by it can be charged with a Corody; and Land so holden can't be ancient Demesne in respect of the Charges incident thereto; and if an Certainty were reserved on the original Grant, the Tenure is not Frankalmoine.

There were 118 Monasteries sounded by Kings of England, whereof such Abbots an Priors as were sounded to hold per Banniam, and called by Writ to Parliament were Lords of Parliament: Of these the were 27 Abbots, and 2 Priors. The Abbots of Feversham, tho he held by Barony, yonever sate in Parliament, because he were called by Writ. All English Bishop were originally sounded by the Kings England, to hold by Barony, and have because

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called by Writ to Parliament. The Bishops of Wales were founded by the Princes of Wales, who held of the King as of his Crown, and when the faid Princes of Wales forfeited their Principalities, the Patronages of them were annex'd to the Crown of England, and the faid Bishops have been call'd by Writ to Parliament, and are chargeable with Penfions and Corodies.

Ten't in Frankalmoine shall do no Fealty, as is aforesaid, in respect of the spirirual Service that he is bound to perform. but Ten't in Frankmarriage shall do it till he fourth Degree be pass'd, and the Alience of Ten't in Frankalmoine shall do Fealty. for if they should do no Service, the Land would be holden of no Man; for avoiding of which Inconvenience the Law creates the service of Fealty, which is the lowest that an be, and incident to every Tenure except Frankalmoine.

Since the Statute of quia Emptores, if a Grant be made to hold in Frankalmoine, hese Words in Frankalmoine are void, for one can hold of Frankalmoine of none but he Donor, but by that Statute no Man can ive Lands in Fee to hold of himself; thereore at this Day, if Land be given to hold n Frankalmoine, with a Dispensation of he Statutes of Mortmain, (which ought to ave been made by K. and all the Lords nediate and immediate, but now by 7 & Gul. 3. 37. it may be granted by K. alone of ishop homsoever the Lands are holden.) Yet the feoffee shall hold of the same Lord of shom the Feoffor held by the same Services. H 2

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So that none can hold in Frankalmoine but by Prescription, or by Force of a Grant made before that Statute to hold in Frank. 98. almoine, or made fince the Statute by the King, (who is not restrained by it,) or by a Subject licenfed by the King, and all the 99. Lords mediate and immediate, to make fuch Grant, for alienatio licet prohibeatur, confensa tamen omnium in quorum favorem prohibita il. potest fieri, & quilibet potest renunciare jui pro se introducto. And if a Lord confirm the Estate of a Parson, to hold of him in Frank almoine, fuch Confirmation changes the Tenure by which he held before, into Frankalmoine, and is not within the Statuted quia Emptores, but remains as it was a Common Law, and is good, because no new Litt. Sell. Service is referred by it to the Lord, but only that the Parson shall hold of him which he did before.

5:0.

If the King license to alien to an Eccle fiattical Person, there is no Need of a non Ol stante of the Statutes of Mortmain, for when it is the express Purport of the King's Gran to enable a Man to do a Thing which i prohibited, it shall not be said that the A knew not of the Prohibition; but such li cence does not dispence with the Statute of quia emptores Terrarum, unless it be a prefly mentioned.

The Words of the Statute of quia Empione are Dominus Rex in Parliamento, Gc. ad in stantiam magnatum Regni sui concessit, which being in an ancient Statute, are as effectua as Authoritate Parliamenti concessit, &c. An being entred on the Parliament Rolls,

hall be intended that the King, Lords, and Commons affented: And the faid Statute beng a general Law, the Judges shall deter-

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nne whether it be a Statute or no.

The Tenure in Frankalmoine is so approriated to the Grantor and his Heirs, or uccessors, that, like the Foundership of a louse of Religion, Tenure by Homage ncestrel, or the Priviledge of bringing a Writ of Contra formam Feoffamenti, or Collaonis, it cannot be transferred to any other. herefore if the Mesne, of whom the Tenant olds in Frankalmoine, die without Heir, (by cason whereof the Mesnalty Escheats, and rowns the Seigniory Paramount,) the Ten't all hold of the Lord Paramount by Fealty nly, for such Lord coming into the Place of the desne, can claim no Services that were not due to m, except Fealty, which is incident to every Teere, but fuch Lord shall hold of his I ord aramount by the same Services by which held of him before, for the Privity between on is not changed. If fuch Meline release his Ten't in Frankalmoine, he thereby tinguishes the Mesnalty, and the Ten't all hold of the Lord Paramount by Feal-And Q. in this Case, if he shall not hold alh the other Services by which the Mesne held, it seems unreasonable that the Lord Paramount uld be prejudiced by the Act of his Tent. protect

A Man can't reserve a Rent to his Heirs, cluding himself; for in his Life-time they it take, nor can they take that by Dent from him which he had not himself. fore the Statute of quia Emptores, to hold

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of his Heirs, such Reservation had been void, and the Ten't should have holden of the Grantor, by the same Services by which he held over. And at this Day, if a Man make a Gift in Tail referving a Rent to his Heirs, the Reservation is void, (a) and the Donee shall hold of the Donor, by the same Services by which he holds over.

100.

(a) 2 Rolls

Ab. 447.

As the Ten't in Frankalmoine is bound to do fuch divine Service as the Law requires, so is the Lord in Consideration thereof bound to acquit him, i. e. to keep him quiet from Entries, and Molestations, for any Services isluing out of the Land to any Lord above the Meine. But he is not bound to acquit him of Suit real to a Let, Torn, or Hundred, for that is not due from one as Ten't, but as Resident in such a la risdiction.

One may be bound to Acquittal three Ways. r. By Deed. 2. By Prescription 3. By Tenure. And by Tenure five Wars 1. By Owelty of Services. 2. By Tenun in Frankalmoine. 3. By Tenure in Frank marriage. 4. By Tenure by Reason of Dower. 5. By (b) Tenure by Homage And ftrel.

(6) Litt. Sect. 144.

If fuch Ten't be distrein'd by a Lor Paramount, the Meine may put his ow Beafts into the Pound instead of the Ten't's.

A Man may have 6 Writs, quia Time before any Diffres, Molestation, or in olinte pleading. I. A Writ of Mesne. 2. A Was adams. rantia Carta. 3. An Audita Querela. 4. Mo

Monstraverunt. 5. A Ne injuste Vexes. 6. A Curi i Claudenda.

The Process in a Writ of Mesne, at Comnon Law, is Summons, Attachment, and Diffress Infinite, in the County where the Writ is brought. And the Plaintiff shall ave Judgment to recover his Acquittal. nd if he be diffrein'd, or damnified, his Damages and Costs. And the Plaintiff in a Writ of Meine may still chuse such Proess, or the Process given by W. 2.

By Force of W. 2. the Mesne shall be orejudged of his Mesnalty, in two Cases. . If he do not appear upon the Process gien by that Statute. 2. If he fuffer the len't, after he has recovered his Acquittal,

o be diffrein'd a fecond Time. A Fore-judgment against Baron and eme, or against a Ten't in Tail, shall bind he Wife, or Issue, till they reverse it in a

Writ of Error.

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4. Mo

The Words of the Judgment by which he Mesne is fore-judged are to this Effect, hat the Mesne shall lose the Services of the en't, and that the Ten't shall hold of the ord Paramount by the same Services by thich the Mesne held. Therefore if two ointenants bring a Writ of Meine, and one fthem be summon'd and sever'd, the other en't forejudge the Mesne, for he alone an't be Attendant to the Lord Paramount sthe Meine was. And if there be two ointenants Meines, and one make Default, and the other appear, there can be no Foreadgment, for the Mesnalty continuing in him that H 4 that

that made no Default, the Ten't can't hold by the same Services by which both the Messus held.

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The Fore-judgment of a Mesne who is a Diss'or shall not bind his Diss'ee; so neither shall a Fore-judgment of a Ten't being

a Diss'or, bind his Diss'ee.

The Fore-judgment of a Daughter binds the Son in Venter sa mere born after, and the Fore-judgment of the Heir of a Man protes'd did bind the Ancestor being afterwards deraign'd, for in both Cases the Person fore-judg'd alone had Right at the Time.

A Bishop, &c. can't be fore-judg'd, for

he alone can't prejudice the Church.

There must be but one Mesne between the Lord distreining, and the Ten't distrein'd, by the express Words of the Act.

## Of Homage Ancestrel.

The Ten't held by Homage, and he and his Ancestors had Time out of Mind holden of the Lord and his Ancestors or Predectsors by Homage, and done Homage to them And the Lord that had received Homage of such a Ten't, was bound to warrant him when impleaded of Land so holden. And such Ten't was not bound to attorn to the Lord's Grantee in a per qua Servitia, unless the Conusee would grant to warrant the Land to him. And there was a Writ de Homagin

101.

Homagio capiendo to compel the Lord to reeive the Homage of fuch Ten't, for the senefit of his Warranty.

Such Tenure likewise bound the Lord to

cquittal.

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If the Lord, being vouch'd by Force of uch Tenure, had demanded what the Ten't ad to bind him to Warranty, and the Ten't ad shewn that the Land was holden by somage Ancestrel, G'c. if the Lord had neer receiv'd Homage of the Ten't, or his incessors, he might have disclaim'd in the eigniory, and ousled the Ten't of the Warranty, and by such Disclaimer the Seigniory was extinct, and the Ten't held of the ext Lord. But he that had received Homage could not disclaim. And a Ten't in rankalmoine is so much savour'd, that he Lord in a Writ of Mesne brought by such Ten't, can't disclaim.

Voucher, in Latin Vocatio, is when the en't calls another into Court that is ound to warrant the Land, i.e. either to fend the Right against the Demandant, tyield other Land in Value. It can be ally us'd in Actions wherein a Freehold or theritance is demanded, except only in a Vitt of Ward, in which tho' a Chattel were by demanded, yet the Tenure of the Inheritance, which is in the Realty, was the Ground the Action. But no Voucher lies on the rant of any other Chattel with Warranty, ut an Action of Covenant, if it were anted with Deed; if without, Deed, Case,

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The first Process in Voucher is a Summon ad Warrantizandum. And if the Vouchee he fummon'd, and make Default, a Magnum Cape ad Valentiam shall be awarded; and then if the Vouchee make Default again, Judgment shall be given against the fent, and for him to have in Value against the Vouchee. If the Vouchee appear, and af ter make Default, a Parvum Cape ad Valentiam shall be awarded; and if he make Default again, the fame ludgment shall be given as before. If the Sheriff return that the Vouchee hath nothing, then after an Aliast Pluries, a Sequatur sub suo periculo shall go, whereon if the Sheriff make the like Return the Demandant shall have Judgment against the Ten't, but the Ten't shall not have Judgment against the Vouchee, for he was never warn'd, and it appears that he ha And after such Judgment the Ten't may have a Warrantia Carta, or voud again; but where he hath had Judgment to recover in Value, he shall never vouch again (a) if by such Judgment he had full Benefi of the Warranty.

(a) Co.L. 393. a.

102.

Foreign Voucher is when one impleaded in a particular Jurisdiction vouches, and prays that the Vouchee may be summon in some other County, out of such Jurisdiction.

The Civil Law binds every Man the warrant what he fells, but the Common Law does not without a Warrant ty in Deed, or Law, for the Rule is, a weat Emptor.

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In Voucher by Force of Homage Ancefrel, the Land which the Lord had at the Time of the Voucher, by Purchase, or Defcent, should be charg'd; for it could not be known whether he had any from him that created the Seigniory, because it had lasted Time out of Mind, and it was not the Grant of any Ancestor, but the Continuance of the Privity between each Family, Time out of Mind, which created the Warranty. But an Heir shall be charg'd, by an express Warranty, only for such Land as he has by Descent from him that created it; and an Heir shall be charg'd in a Writ of Annuity only in respect of those Lands which he has by Descent from the Grantor, and for this Reason a Writ of Annuity will not lie against him by Prescription.

Warrantia Cartæ binds the Land from the Time of the Writ, but Voucher binds it only from the Time of the Voucher. A udgment in an Action of Debt against an Heir binds the Land descended from the Time of the Writ, for the Action was brought in respect of such Land; but a udgment for ones own Debt binds the and from the Time of the Judgment only, or fuch Action is brought in respect of the Person, and not of the Land. Issues reurn'd on a Juror shall be levied on the Feoffee, tho' they were lost before the Feoff-ment, for the Juror was return'd in respect of the Freehold; but where the Plaintiff is arrand nonsuit, the Land which he had at the is, I lime of the Amerciament only shall be harg'd, not what he had at the Time of finding

finding the Pledges, for he is amerced for a personal Default, and not in respect of his Land; but in the Case of the Juror the Land is charged with the Issues by the Sheriff's Return, and cannot be discharged but by the Appearance of the Ten't.

If the Feoffor bind special Land to Warranty, his Person is hereby bound, but not the Land, unless he have it at the Time of

the Voucher.

A Body Politick can't hold by Homage Ancestrel, but Land might be so holden of a Body Politick, provided the Tenure continued in the Blood of the Ten'ts, and the Privity of Succession continued in the same Body Politick, and if a Prior and Covent had been translated to a Dean and Chapter, the Ten'ts that held of them by such Tenure before, held still by the same, for the Body was never dissolv'd, but in effect remain'd.

No Sole Corporation, or Head of a Corporation Aggregate of many Persons dead in Law, can disclaim, for the Law would never trust one single Person with the Power of disposing of the Inheritance of his House. But if an Abbot or Prior had disclaim'd in a Quo Warranto brought by K. this should have bound their Successors; so should their Confession of the Action in a Writ of Annuity, because it can't be falsify'd by an higher Action; and a Recovery in a real Action against them, or a Fine levy'd by them bound the Successors, till they had avoided it in a Writ of Right.

& Rep 14.b.

103.

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If an Abbot, &c. had fuffer'd Judgment an Action of Debt, or acknowledged a atute, or Recognizance, with Consent of e Covent, or without, the Successor could ot have avoided Execution, because it was Vid. 43; ut a Chattel.

If fuch Ten't had alien'd, his Alienee hould not have holden by Homage Ancerel, nor should the Alienor himself, if he ad after taken back a State in Fee, for the ninterrupted Continuance of the Privity the Blood of the Ten't was dissolv'd by e Alienation. So if fuch Ten't had made Feoffment on Condition, and re-entred ra Breach, he should not have holden by lomage Ancestrel again. As if cestuyque We had made a Feoffment on Condition efore 27 H. 8. and re-entred for a Breach, eshould have detain'd the Land against the coffees, for the whole Estate and Privity was or the Time taken out of them, and thereby issolv'd for ever. If a Ten't by Homage incestrel were vouch'd by his Alienee, yet ould he not vouch the Lord, for notwithanding the Vouchee comes in in Privity of is former Estate, as to many Purposes, yet ich Vouchee could not come in as Ten't y Homage Ancestrel, as to this Purpose, ecause by the Alienation the Privity beween him and the Lord was discontinu'd. ut if such Ten't had made a Gift in T. or ase L. he might have vouch'd the Lord, a respect of the Rev'n, which he held of they im by the same Tenure by which he held he Land in Possession. And if he had lost he Land in a false, or seign'd Action, yet e Privity remain'd.

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104.

The Ten't who had once done Homage was not compellable to do it again to any Heir, or Alienee of the Lord; but Fealty is incident to every Attornment. If the Lord had been seis'd in Tail, and discontinud and taken back a State in Fee, and received Homage, and died, his Issue being remitted to the State T. might have compell'd the Ten't to have done Homage to him, be cause the Remitter defeated the Estate in Fee, in respect whereof the Father receive the Homage. If the Ten't had alien'd all his Land holden by Homage, he was not after wards compellable to do Homage, but the Alienee was, whether the Alienor had don it or no. And if the Ten't had holden the Lord as of a Mannor, and had don Homage to the Lord, and afterwards the Mannor had been recover'd from the Lor by Title, or Pretence of Title, the Ten was compellable to do it again to the Reco verer, for the Estate of him that received was defeated by the Recovery, and a Ten can't falfify a Recovery against his Lord But the Recoverers in a common Recovery which is by Confent, and is a common A furance, whereon an Use may be limited had no Remedy to distrein for Homage, of without Attornment of the Ten't, before 7 H. 8. 4. which gives them the same Re medy the Recoverers should have had Therefore if one make a Leafe Y. to begin? Michaelmas, referving Rent, and befor Michaelmas fuffer such a Recovery, the R coverers may diffrein for it, because the Re coverers might have done so if they had no fuffer

uffer'd it; but if the Conusee of a Fine ad suffer'd such a Recovery of a Mannor efore the Ten'ts had attorn'd, the Recoverers could not distrein, because the Cousee himself could not, before 4 & 5 Anna 16. And such Recoverers could not are an Action of Debt, or of Waste, against he Lessee, before 21 H. 8. 15. which gives hem such Actions.

If the Ten't had offer'd to do Homage to is Lord, and he had refus'd to accept it, he hould not afterwards have diffrein'd him or it, unless he had first required it, and

he Ten't had refus'd it.

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He that ought to do Homage, or Fealty, aust seek the Lord if he be in England; but it is sufficient to tender Rent upon the and.

By 12 Ca. 2. 24. Tenure by Homage is tamanay, and consequently Tenure by Homage Incestrel.

## Of Grand Serjeanty.

TEnure by Grand Serjeanty, is where a Man holds of the King by such Services she ought to perform in proper Person to be King, as to carry his Launce, to be Marshal, Constable, or Chamberlain of Ingland, or by any Office concerning the ling's Treasury, or Administration of Judice.

One held per Serjeantian ad inveniendum num hominem ad guerrum ubicunque infra 4 Maria; this was Grand Serjeanty, because t was to be done by the Body of a Man, and 105.

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107. and if he could not find another to do it, he was bound to do it himself.

To hold of K. by Cornage, i. e. to blow a Horn to give Warning of the Enemies coming into England, was Grand Serjeanty; to hold by it of a Subject, was Kr.'s

Service.

Ten't by Grand Serjeanty was never bound to pay Escuage, or Aid purfaire fur Chivalier, Oc. So that 12 Ca. 2, 24. Is Declarative as to this Point. His Relief is a whole Year's Value of his Land, over and above all Charges and Reprifes, whereas Ten't by Escuage paid but the 4th Part. Ten't by Escuage ought to do his Service out of the Realin; these for the most Part within it. None can hold by Serjeanty but of the King. Ten't by Elcuage might make his Deputy; but when Ten't by Grand Serjeanty is to perform any high Office of State, or to do any Service to the Person of the King, he can't make a Deputy without Licence: But he that held to ferve him in his Wars within the Realm, or by Cornage, might make a Deputy.

At Ric. 2d's Coronation, W. a Citizen was not admitted to hold the King's Towel, but he did it by the Earl of C. his Deputy. One Furneval of an ancient Family was first made Kt. and then supported the King's right Hand. Anne Countess of P. who held by such like Service, was adjudged to do it by Deputy, because a Woman can't do it in Person. And John Earl of P. being under Age, and in the King's Custody, the King

appointed

ppointed one to perform such Service in his

Ten't by Grand Serjeanty was faid to old by Kr.'s Service, because the King had Ward and Marriage of such Ten't; and tho bese are taken away by 12 Ca. 2. 24. yet the morary Services of Grand Serjeanty still remains.

#### Of Petit Serjeanty.

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Etit Serjeanty, is when one holds of the King by rendring Yearly a Sword, or ow, or such other Things touching the Vars, and this is Socage in Effect, because the Ten't is not bound to do any thing in is proper Person touching the War.

All grand and petit Serjeanty is in Capite: in holden of the King as of his Crown; at he that holds of him as of an Honour, as of his Person, (as when a Tenure in os Escheats to K.) holds not in Capite; to Tenure can be in Capite, but what as originally created by the King. An onour is the most noble Seigniory, as begoinginally created by K. yet it may be anted to others.

# Of Tenure in Burgage.

Enure in Burgage, is where there is an ancient Burgh, the Tenements whereof cholden of the Lord, whether K. or other ord, Spiritual, or Temporal, by certain Rent, diuch Tenure is but Socage. A Burgh is ancient Town that fends Members to Parliament.

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liament. It was anciently taken for those Companies of 10 Families that were one anothers Pledges, from the Saxon Word Bir. boe, a Pledge, whence came Headborough Gc. A City is a Burgh incorporate, that has, or has had a Bishop; and tho' the Bishoprick be dissolved, yet the City remains, Every City is not a County, for it may be Part of the County in which it is.

Parliament so called a Parler la ment, was, before the Conquest, called the great Court, or Meeting of the King and all the wife The King has diverse Councils 1. The Parliament, called Commune Concilium, 2. Magnum Concilium, the Lords in Parlis ment, or out of Parliament. 3. His Privy-Council, for Matters of State. 4. H Judges of the Law, for Law Matters.

For the greater Part, fuch Boroughs have Customs and Usages, which others have not; some have this Custom, that the youngest Son shall inherit all his Father Tenements within the Borough, whether were feis'd in Fee-Simple, or Fee-Tail, of of a Freehold descendible, as Heir to hi Father, which is called Borough English.

A Custom of devising Lands, Borough English, or Gavelkind, may be alledged it a City, Borough, or Mannor, but not it form, an upland Town that is neither City no swe. Borough. But a Custom to have a Way to the Church, and to make By-Laws for the Reparation of the Church, and well ordering the Commons, and such like Things, may be alledged in an upland Town, that is not be alledged in an upland Town, t ther City nor Borough.

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By Custom of some Burghs the Wife hall have Frank-Bank, i. e. shall be endowof all her Husband's Tenements; in ome she shall have the Whole, or Half, um sola, or casta vixerit. In Gavelkind the Justiand shall be Ten't by Courtesy, thether he has had Issue by his Wife or ot.

By the Custom of some Boroughs one hay devise Lands and Tenements within hem, and thereby prevent the Descent nereof to his Heir. And the Devisee may ner after his Death, and he has the Freehold or does he want the Executor's Confent, os. If he be holden out, he may enter, rhave the Writ Ex gravi quarelâ, but this les not after actual Possession; but it is interested in the Custom to devise, for other-the sise a Descent cast before the Entry of the Devisee would put him without Remedy.

The Unit Quare of this Reason, for it is said, Co. Bro. Assise, of the lett. 240, b. That a Descent takes not away 35%.

miry of a Devisee, (claiming as it seems by the natute of Wills,) because it is his only Reme-, and why may not the same Rule be apply'd

dis devisee claiming by Custom? By some Cutom, Land might pass by Will nuncupative,
no swell as by Writing, but this is restrained
to the 1the 29 Ca. 2. 3.

The Writ Ex gravi querela, thus expresses
ering he Custom to devise Lands, Quod liceat unimanage civi sive Burgenti ejus dem Civitatis sive
sint urgi Tenementa Jua in eadem civitate siveBurga

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Burgo in Testamento suo in ultima voluntate sua tanquam catalla sua legare cuicunque vo Inerit. By fuch Custom he may devise 1 Rent out of his Land, but not Land intailed.

By 32 H. 8. 1. Lands holden in Socage are

120, 126.

generally devisable by Will in Writing: But before Kr.'s Service was abolish'd, 1 Device was void as to the third Part of Kill Vid. supra, Service Land, and the Third of the Whole whether Socage, or Kr.'s Service Land, belonging to the King's Ten't by Kt.'s Service in Capite. But a Devise of Kt.'s Service Land might by Custom be good for the Whole, for this Statute being in the Affirmative took not away the Custom of devising Lands. If one had convey'd Part of his Kr.'s Service Land to the Use of his Wife, or Children, or Payment of his Debts, he could have devis'd no more of the Residue than would have made two full 3d Parts of the Whole: And if he had convey'd two full 3d Parts to fuch Uses, he could not have made any Devise, except of the Reva of those two Parts: But that he might devise, because it was the Intention of the Act that he might dispose entirely of two Parts. Hereditaments of uncertain Value, as Waifes, Eftrays, &c. could not be devis'd as Part of the two Parts, or left to descend as Part of the Third; but if the had been holden of K. by Kt.'s Service in Capite, they restrained the Devise of more than of two Parts: So did a Rev'n on a State Tail, tho' it were dry and fruitless. Rem

Rem'r mention'd in the Act must be underfood to be fuch as drew Ward and Marjage; therefore if a Rev'n holden by Kt.'s ervice in Capite were granted to one for L. he Rem'r to another in Fee, the Grantee of the Rem'r was not restrain'd during the life of the Grantee L. but after his Death e was, because then his Heir should have en in Ward, &c. If a Lease had been nade for L. Rem'r in Fee, this Rem'r was ot within the Act. If K.'s Ten't by Kt.'s ervice in Capite had made a Devise of all is Socage Land, and then had fold his Cahe Land, and died, the Devise had been Vid. supra, ood for the Whole. A Devise of a Rent, 126. Common, out of all the Kr.'s Service and was good for two Parts only, but Soge Land may be all charged.

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If fuch Ten't so restrain'd had made a coffment to the Use of such whom he ould appoint by Will, the Use vested in e Feoffor, and he had a qualify'd Fee: d if his Will limited the Estates accord-'twas good for the g to this Power, 'twas good for the hole; for the Uses of a Feosfment may be well declared by a Will as any other Writing. of it self it be of no Force to pass Land, the Persons appointed in Pursuance of such ner, are in by the original Feoffment, as ch as if they had been named in it. But if ch Feoffor had devised the Land as Owner, thout any Reference to fuch Power, two ce in its only of the Land would have passed. than a Man had conveyed two Parts to the le of his Wife, Oc. and afterwards had

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made such Feossement of the 3d, and then had devised the Land without any Reference to such Power reserv'd in such Feossement, yet the whole should pass, for the Will must enure to declare the Uses of the Feossement, or else it would be void But a Feossement made to the Use of one Will had given him no such Power, for a had been no more than if he had said to the Use of those to whom I shall divise the Land, in here the Will is not mentioned as a Writing the claring the Uses of another Conveyance, he seems to be taken in its natural Sense, as Writing in it self Effectual to pass Lands.

Altho' a Man cannot convey Land to he Wife, in Possession, Rev'n, or Rem'r, so that they are one Person in Law; yet, because it takes not Effect till after he because it takes not Effect till after he Death. And the Husband may covern with others to stand seised to his Wife Use, or he may make a Feossment to be Use, which shall be executed by Operation of the Statute; but if he make a Covern with his Wife to stand seised to her Use

it is void.

The Wife is disabled to contract withouthe Husband's Consent; but if cesturque U had devised that his Wife should tell he Land, she might sell it to a 2d Husban for she did it in auter droit, and the Vend was in by the Devisor.

A Wife cannot devise Land to her His band, for it shall be intended to be done

Coertion.

4

Cum duo inter se pugnantia reperiuntur in Testamento ultimum ratum est.

By some Custom, any Land may be deised; by others, that which one has by Purchase only; by some, any Estate; by

thers, for L. only.

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By such Custom, one may devise that his recutors shall sell his Land, and in such ase the Land descends to the Heir, because of the Land, but an Authority only is devised, and the Executors may alien to whom they lease, even without Deed, (before 29 Ca. 2. 3.) thether the Thing devised to be sold lie in trant, or not, for the Alience is in by the evisor; or consuetudo ex rationabili causa usitata ivat communem Legem; but Custom can't ke off the Force of a Statute.

Where such Power is devised to Execurs, all must join in the Sale, and if one e, it, being a bare Authority, cannot furve to the rest, but if Land be devised to for L. and then such Power be given to or 4 Executors, &c. and one of them die, d then A. die, the Survivors may fell, during the Life of A. they could not l, and the plural Number of them still mains. Yet if a Will give fuch a Power certain Persons, naming them by their ames, as to J. S. J. N. J. D. and one them die, the Survivors can't fell, for Words of the Will in that Case can't be isfied. But if a Will give Land to Exctors to be fold, and one of them die, the rvivors may fell, for the Truft, being upled with an Interest, shall survive together

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gether with it. In both Cases, they may sell part at one Time, and part at another.

At Law, if one had refus'd to fell, the others could not fell, but now by 21 H. 4. notwithstanding Part of those to who fuch Power is devis'd refuse, the rest m fell. And fo may fuch of those to who Land is devised to be fold who are willing tho' the others refuse, by a favourable Construction of that Statute. But the can't in either Case sell it to the Execute that refused, for he is Privy to the Wil and Executor still, and Executors do fo rem Sent the Person of the Testator, that he does it were survive in all, and every on them, and one of them, as Executor, can more contract with another, than the Tela could with part of himself.

It is safest in giving such Power by Devise, to limit it to the Survivors or Survivor, or those that prove the Will, &c. as when an Estate is devised to Executors to fold, it is advisable to appoint, that the Profits taken by them before the Sale shall Assets, for otherwise they shall not. (a) &

No Custom is allowable but sure as has been used by Title of Presention, viz. Time out of Mind. When the Time of Limitation of a Writ of Right which is a Writ of the highest Nature was from the Reign of R. 1. it was sat That the Continuance of an Usage since the Time, was a good Title of Prescription; (b) quare, Whether by the same Reason the Continuance of the Sa

(a) Dyer 310. pl. 78. Off. of Executors 105. Litt. Sect. 383.

(b) 2 Rol. A. 269.

invance of an Usage for 60 Years, can make a Tule of Prescription, since by 32 H. 8. 2. the imitation of a Writ of Right is reduced to that ime, for the Practice is otherwise. And there is lo another Title of Prescription, which was Law before any Statute, and this is where Custom or Usage has been used de Tempore ujus contrarium. Memoria hominum wifit, which is the Way of pleading a Title Prescription, and is as much as to say, at no Man alive has any Knowledge to he Contrary, or has heard any Proof to the

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Frescription for the most Part is Persoal, being made in the Name of a certain erion and his Ancestors, or those whose state he has, or of a Body Politick, and heir Predecessors. As when 7. S. seised of Mannor in Fee prescribes that J. S. and is Ancestors, and all those whose Estate he as in the faid Mannor, have Time out of find had, and used to have, Common of afture in fuch a Place, being the Land of nother, this is properly Preicription. But Cuffon is Local, as when a Copyholder of he Mannor of D. pleads that within the aid Mannor there is, and has been fuch a lustom, Time out of Mind used, that all te Copyholders of the faid Mannor have ad, and used to have, Common of Pasture n such a Waste of the Lord, Parcel of the lannor. For a Copyholder cannot lay a Preription in himself and his Ancestors, by Reason the Baseness of his Estate. Both Cultom nd Prescription require Usage Time out of find, and long, continual, and peaceable Possession.

114.

Possession. If one prescribe to have a Rent, and a Distress for it, it can't be avoided by Pleading that the Rent was always paid by

Coertion of Distress.

Prescription, being only the Usage of the Country, cannot give a Man a Title to Things that can't be seised as forseited till the Cause of Forseiture appear of Record, a Deodands, or the Goods and Chattelso Traitors, Felons, Felons of themselves, Fagitives, or those that be put in Exigent Nor can it give a Title to Things highly touching the King's Prerogative, as Conutance of Pleas, to have a Sanctuary, to make a Corporation, Coroner, Conservators of the Peace, &c.

But Treasure Trove, Waises, Estraine Wreck, to hold Pleas, Court-Leets, Hundreds, insange Thief, outsange Thief, a Park Warren, Royal Fishes, Fairs, Market Frankfoldage, keeping of a Gaol, Toll, of may be claimed by Prescription without an Matter of Record. And a County Palatin may be claimed by Prescription, and by Reason thereof bona Felonum, &c. And Corporation may be by Prescription.

A Title gain'd by Prescription, can't belo by Interruption of Possession 10 or 20 Year unless there be an Interruption of the Righ as by Unity of Possession of Rent, or Com mon, and the Land charged therewith, of a Estate equally High and Perdurable in both

In a Writ of Mesne the Plaintist prescrib that the Desendant and his Ancestors had a quitted the Plaintist and his Ancestors as the Ter-tenant, Time out of Mind, the Ju

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find that the Feoffor of the Plaintiff's Grandfather, and his Ancestors had been acquitted Time out of Mind, but that fince no Acquit-tal had been, and Judgment was given for the Plaintiff, for the Substance of the Islue was found, tho' not the Letter; and a Title once gained is not lost by wrongful Cesser. So where the Plaintiff in Prohibition alledged a Modus by Prescription, and the Jury found fuch Prescription 20 Years before, and since Payment in Specie, the Plaintiff had Judgment, for the Substance of the Issue is found. And a Commoner that takes a Lease for Years of the Land, may claim his Common after the End of the Leafe, for the Inheritance of the Common was suspended, not extinct, and he Title of Inheritance gained by Precription can't be waiv'd in Pais.

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Limitation of Writs is the Time prescribed by Statute, within which the Demanlant must prove himself, or some of his Antestors, to be seised, see 32 H. 8. 2. but the aid Statute shall not be extended to make beisin within the Time prescribed necessary insuch Cases, in which by common Possibiity it cannot be had within it, as in a Formedon in Descender, quare Impedit, &c. or o make it necessary in such Cases wherein eisin is not Material, as in case of Rent reated by Deed, or reserved on a particular castate. By the 21 Ja. 1. 16. He that has sight or Title of Entry, must enter within 20

fcrib fears. See the Statute.

There may be fufficient Proof by Record t Writing, tho' it exceed the proper Menory of any Man living; therefore no Prefeription

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fcription can be against a Statute, because it is the highest Record, unless it be saved by the same Statute; but an affirmative Statute, as that of Wills, takes not away a Custom; nor does a Negative one, that is declarative of the Law, as that Leets shall be holden but twice in the Year.

Every Burgh is a Town, non è converso: Tho' it be decayed, it sends Burgesses. A Town is such a Place as has, or has had a Church, Celebration of divine Service, Se-

craments, and Burials.

## Of Villenage.

holds of his Lord, to whom he is Villein, certain Lands, to do to him Villein Service, as to carry out the Dung, &c. and to do whatever is commanded by the Lord, ubi scire non poterit vespere, quale services fieri debet Mane. And Freemen, by the Custom of some Mannors, hold by Villein Service, and their Tenure is Service. Ya they are free, because their Services are certain, tho' the Tenure be called Tenure in Villenage.

Common, or any Thing certain, the Lord shall have it; but he shall not have a Common uncertain, for it may be a greater Charge to the Ter-ten't; nor shall he voud in respect of a Warranty made to his Villein; or sue a Bond, or Covenant made to him, &c. because Things in Action lies.

Privity, and can't be transferred.

Leffee L. T. or W. of a Villein shall ente

and hold to him and his Heirs a Villein's Purchase in Fee; but a Bishop, that has a Villein in the Right of his Bishoprick, shall hold the Villein's Perquisite in Fee in the same Right; and a Husband, that has a Villein in Right of his Wise, shall have the Perquisite in her Right. And if Executors Co. Liste that have a Villein for Years, enter into 124. b. Land purchas'd by him in Fee, the Fee shall be Assets in their Hands.

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If Land be given in T. to a Villein, the Lord entring, shall have a Fee determinable on the Villein's Dying without Heir of his Body, and the Fee absolute is in the Donor; and tho' the Lord after infranchise him, yet his Issue shall not recover, for the Statute of Donis extends only to those that have Ability to hold such Estate. So if Land be given to an Alien in T. and K. enter, and then make him a Denizen.

If a Freeman take Land to hold by Villein Service, as to pay a Fine for the Marriage of his Daughter, &c. he shall pay such

fine, and yet he remains free.

Every Villein is fuch, either by Title of Prescription, viz. that he and his Ancestors have been Villeins Time out of Mind; or by his own Confession in a Court of Record.

Every Court of Record is the King's Court, the the Profits may be anothers; if the Judges of such Court err, a Writ of Error lies; the Truth of its Records shall be tried by the Records themselves. But the Proceedings of Courts Baron may be denied, and tried by Jury, and a Writ of false Judgment, not of Error, lies on their

113.

119.

Judgments. And they can't hold Plea of Debt, or Trespais, if the Debt, or Damages amount to 40 s. or of Trespais quare Vivillamis.

The Issues born after such Confession are

Villeins, those born before are free.

If a Villein purchase Lands or Goods the Lord shall have 'em, but if he alien them, or they descend, or escheat, or berecover'd in cessavit, before the Lord enters, he cannot enter, nor claim them, for he had only a Possibility before Entry, and neither jus in re, nor ad rem. If the Villein be differs'd, the Lord may enter; (For his Right of Entry can't be taken away by the Brongful Act of the Diss'or;) but he cannot enter after a Descent cast, until the Villein has recovered the Possession. If a Villein being Ten't T. discontinue, the Lord can't enter till the Islue has recover'd in Formedon. If a Villein buy Goods real or personal, and fell 'em, or make Executors, and die, before the Lord feiles 'em, or if a Nief buy Goods and take a Husband before the Lord feile the Goods, he can't seite 'em. But if the Lord feife Part in the Name of all, or claim the Goods within View, which amounts to Seifure, like the Claim of a Ward in View, this vests in the Lord all the Goods that the Villein has or may have. Note, Bona, Goods, signifies all Chattels real or perfonal.

But the K. may enter into Land purchas'd by his Villein, or feife his Goods, notwithstanding such Alienation; but he shall not have the Mesne Profits of the Land,

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before the Office found, for his Title is by he Seifure: But the Property of the Goods sin the K. before any Office or Seisure.

If a Villein purchase a Rev'n, the Lord may come on the Land, and claim it, and. by that Claim it is in him, for it can be faim'd only on the Land, and his Entry for this Purpose is no Trespass; so if a Vil-

ein purchate a Rent, Common, Ga.

If the Villein purchase an Advowson; he Lord may come to the Church, and claim the Advowson, and by such Claim heAdvowson is in him; so if the Church become void, the Lord may prefent in his own Name, and gain the Inheritance, for tho' the present Avoidance be so far in the Naure of a Chose in Action, that it can't be transferred by the Act of the Party, yet it s not merely a Chose in Action, for the Husband may prefent to a Church become roid in his Wife's Life.

A Prefentation is a Patron's Act offering 120. his Clerk to the Bilhop to be instituted to fuch a Church, in these or the like Words, Prasento vubis A. B. Clericum meum ad Ecclefum de D. This may be done by Word as well as by Writing, and if it be by Wriing, it is no Deed, but in Nature of a Leter to the Bilhop, and therefore the K. may present by Word, as well as a common

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If the Lord present for Money given by the Clerk, or any other for him, such Instiution gains not the Advowson, but is nerely void by 31 El. 6. tho' the Clerk knew not of it. And whereas at Law fuch-

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Institution, &c. were only voidable, the they are now absolutely void; and ifi rightful Patron present Simoniacally, & shall have the Turn; but if an Usurper present Simoniacally, the rightful Patron shall present. And the Statute says, that from henceforth fuch Clerk shall be adjudged a disabled Person in Law, to have and enjoy the faid Benefice, and this being an absolute and direct Law, and made for Suppression of Simony, the K. can't dispense with it by any Grant, with Non obstante, And now by I W. M. Sels. 2. c. 2. it is declared and enacted, That all Dispensations with Non obstante of any Statute are void, and that the Power of Suspending Laws is illegal.

A Villein is either Regardant, or in Gross; A Villein Regardant is, when one a Mannor, to which a Villein is Regardant and he, or those whose Estate he has, have been seised of him and his Ancestors a Villeins and Niess Regardant to the same Mannor, Time out of Mind. Such Villein granted to another, is in Gross. So if A and his Ancestors have been seised of A and his Ancestors as Villeins in Gross, B is

a Villein in Gross.

He that would have a Thing that lies in Grant by Prescription, must prescribe in himself and his Ancestors, not in himself and those whose Estate he has, for he cannot have their Estate without Deed, which must be shewn. But of Things regardant or appendant, one may prescribe, that he and those whose Estate he has in the Mannor or Land to which such Things are Regardant.

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ardant, Gc. have been feised of fuch hings, as Regardant or Appendant to fuch Mannor, &c. Time out of Mind, because the fannor, Ge. might pass without Deed; nd tho' a Man can't claim a Thing that lies n Grant by a que Estate, yet where it is but Conveyance to the Thing claimed by Precription, a que Estate may be alledged of a hing lying in Grant, as one may prescribe hat he and his Ancestors, and all whose state he has in an Hundred, have Time ut of Mind had a Leet, for the Title to the fundred is not in question, but whether the let be incident to the Hundred. And the laintiff in Bar of an Avowry may alledge que Estate in the Lord, as (a) that J. S. (a) Bro.que bose Estate the Lord has in the Seigniory re- Estate3. aid to him, &c. for if he, under whom the ard claims, had no Title to the Services desanded, the Lord can have none, nor shall the laintiff be bound to shew the Conveyance he is ot privy to.

Regularly, the Plaintiff or Demandant hall not entitle themselves by a que Estate, Bro. que ut the Ten't or Defendant may, and so may le Plaintiff in Replevin after Avowry ude, for thereby he becomes as Defenant. One may plead a que Estate of a Teancy in T. or of an Estate L. if he aver te Life of Ten't in T. or Ten't L. For at an such an Estate might have been gain'd by ecupancy. But one cannot plead a que flate of a Lease T. in himfelf : Because a Title o a Lease Y. cannot be had but by Grant of the arty, or Act of Law. Yet one may plead a que

flate of a Lease T. in a (b) Stranger, because (b) 1 Lev.

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be is not privy to his Title. A Dirs'or, &c. or any other in the Post, may plead a que Estate. But every Ten't that pleads it must alledge it in himself, and not in those in the mean Conveyance from whom he claims.

Nothing but a Villein is said to be Regardant to a Mannor, &c. but an Advowtion, and other Things may be Appendant. Inheritances Appendant, or Appurtenant, are such as belong to others more worthy. Appendants are always by Prescription, but Appurtenants may in some Cases be created at this Day, as if one grant to another and his Heirs Common of Turbary, to be spent in his Mannor, or Common in such a Moor, for his Beasts levant and couchant on his Mannor, by such Grant the Commons are appurtenant to the Mannor Both Appendants and Appurtenants are abled in Latin Pertinentia, and pass by the Grant of the Mannor to which, &c.

If A. have a Mannor to which the Roya Franchises of Waise and Stray are appeadant, and convey the same to the K. the said Franchises are thereby re-united to the Crown. But if K. grant the Mannor in a large and ample a Manner as A. had it &c. it is said that the said Franchises shall be appendant again, or rather appurtenant

Prescription can't make Land appendanto Land, or Things incorporeal to Things in corporeal, but it may make Land appendant to an Office, or Advowsons, Villein Common, &c. to Land. But it can't make

Effore

Estovers of Fewel to be burnt, or a Seat in a Church, appendant to Land, but only to a House. Nor can it make a Leet, that is Temporal, appendant to a Church that is Ecclesiastical; for the Appendant and Thing to which, &c. must agree in their

Nature.

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The Thing to which another is appendint must be of perpetual Subsistence, therefore an Advowson, appendant to a Mannor, is in truth appendant to the Demesnes, not to the Services. An Advowson is appendant to the Mannor of D. of which the Mannor of S. is holden, the Mannor of S. becomes Parcel of the Mannor of D. by Efcheat; the Advowson is still appendant to the Mannor of D. only. Where a Corody; which may be extinguish'd, was faid tohave a Chamber Parcel of it, there he that: had the Corody had but his Habitation in it, as a Fellow of a College has in his Chamber. As for Offices in Fee to which Land may belong, they are in perpetual Subsistence, either being in Effe, or in that they are grantable over.

If Parceners of a Mannor, to which an Advowson is appendant, make a Partition of the Mannor without speaking of the Advowson, or make Composition to present against common Right, yet it remains appendant; but if it be expressly excepted upon

the Partition, it becomes in Gross.

There be four Kinds of Common of Pa-

sture.

7. Common Appendant, which of common Right belongs to arable Land for Beafts that

that lerve for M. intenance of the Plotteh, as Horses and Oxen to plough the Land, Kine and Sheep to compester it; and for such Common, there is no Need to prescribe.

2. Appurtenant, for Beast not commonable, as Swine, Goats, &c. and this can't be had without Prescription. Common Appendant, because it is of common Right, shall be apportioned by the Commoner's Purchase of part of the Land, in which he hath such Common; but Common Appurtenant shall be extinct by the Commoner's Purchase of part of the Land in which, &c. both Common Appendant and Appurtenant shall be apportioned by Alienation of part of the Land to which the Common is Appendant or Appurtenant.

3. Common pur Cause de Vicinage, which is but an Excuse of Trespass, and no Man can put his Beasts into the Land in which he has such Common, but they must escape thither themselves, and either of the Paris that has such neighbouring Grounds may

enclose against the other.

4. Common in Gross, which belongs to no Land, and must be by Writing or

Prescription.

Some Commons are for a certain Number of Beafts, some are certain only by Confequence, as Common for so many Beafts a are Levant and Couchant on such a Mannor, &c. Others are uncertain, as Common Sans number in Gross, and yet in all the Cases the Ten't of the Land must feed then too.

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Common Appurtenant to Land is only for easts levant and couchant thereon, and if he bat has such Common put in other Beasts, he a Trespasser. (a) But he that claims the (a) 2 Saund. le Pasture of Land, or Pasture for a certain 327. Number of Beafts, may license a Stranger to

ut in his Beafts.

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Common in one Mannor appendant to nother, is appendant to the Demesnes, and ot to the Services; therefore if any of the enancies escheat, the Lord shall not enrease his Common by Reason thereof. One an't prescribe to have Communiam Pastura, or Piscaria, or Liberam Piscariam, and exlude the Owner of the Soil, for it is against he Nature of a Common; but one may rescribe to have solam vesturam Terra, rom fuch a Day to tuch a Day, and exclude he Owner of the Soil; (b) but it has been (b) 1 Vent. puestioned whether one can prescribe to have so- 321. am Vesturam, or pasturam Terræ at all i Saund. Times, so as wholly to exclude the Owner of the 2 Saund. Soil from feeding there, but one may prescribe 326. whave separatem Piscariam, and exclude the Owner of the Soil wholly from fishing, for he has fill the Profit of the Soil and the Water, &c.

The Dils'ee of a Mannor may prelent to a Church appendant before he re-enters into the Mannor, but he can't use Common appendant, because it would be a Prejudice to

the Ten't of the Land.

One may confess himself to be a Villein in a Court of Record, and thereby he becomes a Villein in Gross. As if in a Pracipe brought against a Man, he confess himself to be a Villein to A. he is by this his Villein

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Villein for ever, tho' the Demandant reply that he was free at the Time of the Writ, and the Jury find that he was so. In a Nativo habendo, if the Plaintiff offer to prove the Villenage by the Defendant's Kindred, and the Uncles of the Defendant, being exmined in Court, confess themselves Villeins to the Demandant, and this be entred on Record; they are made Villeins thereby for ever. But if one come into Court extrajudicially, and confess himself a Villein to J. S. he is not bound thereby, for the Court has no Authority to take his Confession.

A Man that is a Villein is call'd a Villein, a Woman is call'd a Nief; and a Woman outlawed is faid to be waiv'd, for he is not fworn to the Law, as Men are at the Age of 12, or more, therefore fuch are faid to be Utlagati, Women Waiviata, id est, Determined.

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If a Villein marry a Free-woman, their Issue is Bond; if a Free-man marry a Nich the Issue is free, for Husband and Wise are one Person in Law, but by the Civil Law, partus sequitur Ventrem. A Bastard cannot be a Villein, unless he will confess himself such, quia nullius Filius est, for as he can to ceive no Benefit of his Parents by his Birth, shall he have no Prejudice thereby. And tho better Case than the langul Issue, yet the Litural not make an Exception from it to the Prejudice of Freedom. A Bastard is not such Son in Consideration whereof an Use may be rais'd. A Child born more than nin Month

Months after a Man's Death can't be repu-

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ted his Son. A Villein may bring all forts of Actions against any but his Lord, but he can bring no Action against his Lord, whether he have an Estate of Inheritance in him, or only an Estate L. or Y. Oc. But if the Lord make a Leafe of his Villein, he may bring an Action against the Lessor during the Leafe: And a Villein may bring an Appeal of the Death of his Ancestor against his Lord, and if it be found for him, he is infranchifed; and by the general Purview of the Statutes, which give an Appeal of Rape, a Nief may have an Appeal of Rape against her Lord: But a Villein cannot have an Ap-

peal of Robbery against his Lord.

A Villein as Executor, shall have an Action of Debt against his Lord, and if the Lord take from him Goods which he has as Executor, he shall have an Action of Trespass against the Lord, and recover Damages to the Testator's Use. And he is not infranchised by such Action, if the Lord make Protestation that he is his Villein: But fhe do not, the Villein becomes free, tho. he Matter be found for the Lord, and gainst the Villein. But a Protestation saves im that takes it from being concluded by his Plea, if the Issue be found for him, (a) and (a) Finch of oit shall, as it seems, tho it be found against Law, 359. im, if he could not plead the Matter which he takes by Protestation; as where one enters into Warranty and takes by Protestation the Va- Co. L. 126. ue of the Land, this shall ferve him as to a.

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the Value, albeit the Plea be found against hum.

Every Tryal shall be from the Neighbourhood of a Town, Parish, Hamler, Mannor, Castle or Place known out of a Town, Oc. as some Forests and such-like, within the Record, within which the Iffue is alledged, which is most certain and nearest thereto; as if a Fact be alledged, in K.'s Street, in parochia Mar. in civitate West. mon. the Visne shall come from K. Street, for being generally alledg'd it shall be esteem'd a Town; but if the Words had been, in quadam platea vocata K. Street, Oc. it should have come from the Parish, for no Visne can come from a Street. Tho' a Parish may contain diverse Towns, yet being generally alledged, it shall be intended to contain no more than one, unless the Party shew the Contrary. If a Trespass be alledged in D. & null tiel Ville be pleaded, the Jury shall come de corpore Comitatus; for to award the Venire to D. would be to prejudge the Question. If it be alledged in D. and S. & null tiel Vill de D. be pleaded, it shall come from S. If a Mannor beal-

In a real Action, if one demand Landa Heir to his Father in one County, and al ledge his Birth in another, and it be denied that he is Heir, it shall be tried when the Land lies; for his being born of such Woman is not so material in this Case, as he being married to the Person from whom h

ledg'd in a Town, the Visne shall be from

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claims, which may be presum'd to be best known where the Land lies; but if he demand Lands as Son and Heir to a Woman, &c. it shall be tried in the County where the Birth was alledg'd, for if he can prove his Birth of such a Woman, he must be her lansul Issue, whomsover she were married to, and the Presumption of Law shall be in favour of Legitimation. So where Bastardy is generally alledged, mutais mutandis.

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If one plead Letters Patents, and the other plead non concessive, it shall not be tryed where they bare Date, but where the Landies, for the Issue is not whether such Patents are made, (for they are Records, and cannot be denied,) but whether the Land pass'd by m.

When the Issue extends to a Place at Law, nd to a Place in a Franchise, it shall be ried at the Common Law.

Tho' the Venire be awarded to the Coroers where it ought not, or the Visine come
om a wrong Place, yet if it be done by
consent, entred of Record, it is good.

But by 4 & 5 Annæ 16. Venires out of the worts at Westminster, shall be de corpore-omitatus, except in Prosecutions Criminal, ad on penal Statutes.

In an Action against two, one pleads to the Writ, and the other to the Action, the lea to the Writ shall be tried sirst, for if the sound, it abates the whole Writ. In respass, one pleads Not guilty, and the other Release, the Plea of Release shall be tryed the for if it be found true, the other Desidant shall take Advantage of it. But in

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real Actions one shall have no Benefit of the other's Plea; therefore, the the Plea of one go to the Whole, yet both shall be tried, for each Party may lose his Part by his Missplea. If there be an Issue for Part, and Demurrer for Part, the Court may direct the Tryal of the Issue, or judge the Demurrer first, at their Pleasure.

An Issue is a single, certain, and material Point, issuing out of the Allegations of both Parties.

Being taken generally, it refers to the Count, not to the Writ; as in Account, the Writ charges the Defendant generally, to be Receiver to the Plaintiff, the Count charges him especially, as Receiver by the Hands of T. he pleads that he was not Receiver modo & formâ, this refers to the Count, so that he shall only be charged with the Receipt, by the Hands of T.

An Issue shall not be join'd on a Negative Pregnant, as ne dona per le fait, which implies a Gist by some other Conveyance; so that the Court must be in doubt, whether the Party ongth to have judgment, tho' the Issue be sound for him.

An Issue join'd on an absque hoc, to ought to have an Assirtantive after it, it he that traverses the others Plea, ought not to conclude, hoc petit quod inquitatur per Patriam, if he be Plaintiss, or de hoc point is su per Patriam, if he be Desendant; because, per haps the other Party may demur, but such Conclusion ought to be made by him that pleaded the Matter travers'd, upon his re-affirming of it.

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per-Con An Issue regularly ought to confist of an ffirmative and a Negative; and two Affiratives shall not make an Issue except in pecial Cales, as (a) where the Defendant (a) Co. eads that the Plaintiff was born in France; Litt. 261. al be replies that he was born in such a Place England; this is a good Issue, for if he wald traverse the Birth in France, it could u be tryed. Sometimes an Issue is good, to the Affirmative and Negative be not in recise Words, as if in an Action of Debt Rent by Lessor T. the Desendant plead at the Plaintiff had nothing in the Land the Time of the Lease, and he reply, that was seised in Fee. For the direct Traverse the Plea, viz. That he had something in the C.o. Jac. and would not decide the Question, for he might 312. we an Interest as Lessee W. and yet not be able make a Lease Y.

Some negative Pleas are Issues of themlves, and he that pleads them, may conule, of hoc petit quod inquiratur, Oc. as here the Demandant counterpleads a Vouur, that neither the Vouchee nor his Anflors had any thing in the Land, he shall onclude & hoc petit, &c. or where one tads in Avoidance of a Fine, quod partes it wit nihil habuerunt, he may make the like Con-of the whon, for either of these Pleas being sound for Parim that pleads them, will make an End of the full datter; and the Affirmatives directly contrary these Pleas, viz. that he and his Ancestors of something in the Land in the first Case, or it tond, are not only uncertain, but immaterial, At til either he or any of his Ancestors were Sei-

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sed in the first Case, or if either of the Paring to the Fine were seised in the second, it is sufficient: So if the Ten't in a Writ of Dower plead nunques seisueque Dower, he shall conclude, & de hoc ponit se super Patriam, &c.

Issue shall not be taken whether a Wo-

for Filiatio non potest probari.

The Lord can't maim his Villein (in disable any Member of his Body, so as to make it unfit for Fighting, which can be expressed by no other Word but Mayhom vit,) because the Life and Members of every Subject are under K's Protection, that the may serve him and their Country: And it sineable for a Man to maim himself. If the Lord maim his Villein, the Villein and have an Appeal of Maim against him, so in such Action he can only recover Damages, which the Lord shall be indicted for and grievously find and ransom'd.

Fine and Ransom do both signify the same pecuniary Punishment, call'd a Fine because it makes an End for the Offens with K. a Ransom, because it redeem from Imprisonment, for regularly he that sined, is imprison'd till it be paid. Anciently he that was guilty of Maim, lost the same Member, therefore the Writ was Foliaise Mayhemavit, and tho' at this Day Danages only are recovered, yet the Word Foliaise is retain'd. By 22 Ca. 2. 1. Slitting to Nose, or cutting off Nose, or Lip, or cutting off, or disabling any Limb, or Member, minute.

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ntent to maim, or disfigure, is Felony without

lergy. An Amercement, in Latin call'd Miserirdia, differs from a Fine, in that a Capiar shall not be awarded for it, as it shall ra Fine, and it ought to be affels'd moerately, and affeer'd by ones Equals, or elfe Writ de moderata Misericordia lies. The cason why the Ten't or Defendant is nerc'd, is for his Delay in not rendring the hing demanded at the Day, according to e Command of the Writ; and therefore if before Judgment pardon the Delay, hich is the original Cause of the Amerceent, he discharges it, tho' he be not fully utl'd to it before Judgment. If an Infant inging the Plea come to full Age, he shall be amerc'd, but for his Delay after his III Age.

And if the Plaintiff be nonfuit, or Judgent be given against him, he shall be need pro falso Clamore; so shall he be need, where the Writ abates by his own ct, but not when it abates by Act of od. Those that find no Pledges, shall not

amerc'd as K. Q. G.

There are fix Sorts of Persons disabled to me any Action, and if they do bring one, demanded if they shall be wered.

I. A Villein is disabled to bring an Acti-

against his Lord.

He that pleads in Disability, shall but dend the Wrong and the Force, and shew we the Plaintiff is disabled, and demand adgment if he shall be answered. But one

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one can neither plead in Disability, or to the Jurisdiction, unless he make himself Party by this part of the Desence. Sed 0. For (a) the Desendant in Electment may that

(a) 3 Lev. For (a) the Defendant in Ejectment may pleat that the Land is ancient Demesne, either min

(b) 1 Lur. or without making any Defence, and so (b) is feems that a Man may plead other Pleasing Abatement without making any Defence; but the surest Way is to plead venit & defendit vim & injuriam, without adding any more; but after full Defence, (which is thus, defendit vim & injuriam quando, & dama, & quicqui

(c) 1 Lut. 7. quod ipse defendere debet, or (c) thus, desending vim & injuriam quando, &c.) one canno plead in Disability, nor to the Jurisdiction It is so necessary for the Desendant to make Jawful Desence, that the he plead a goal Bar without it, Judgment shall go again him. If the Lord plead, that the Plaints his Villein, and it be found that he is seen and the Lord bring Error, this does not in franchise the Villein, nor needs the Lord make Protestation, while the Record is in

None at Law could sue, or defend to Attorney, without Writ or Warrant so to but by one call'd Responsalis he might, Case of Extremity, shew the Cause of habsence, and certify on what Tryal would put himself. And one may have Essoign, or a Protection cast for him by

Stranger.

2. He that is outlaw'd, (as any one me be that is past the Age of 12,) or has about the Realm, is disabled to sue an Action his own Right during the Outlawry, of

out he may sue in autre Droit as Executor, te, and he may bring a Writ of Error to everse an Outlawry, he may likewise bring n attaint by 23 H. 8. 3.

One that is outlan'd in the County Palatine of ancaster is disabled to sue at Westmintter, but me outlawed in Chester or Durham is not, 1 Vent. 155. or the former is a County Palatine by Parlia-

ent, the latter by Prescription only.

When Outlawry is pleaded in Difability. he Record must be shew'd forth presently, b pede Sigilli, unless it be in the same lourt; but when it is pleaded in Bar, a by shall be given to bring it in, if it be enied.

Judgment given by the Coroners in the ounty, does not disable a Man, till the xigent be return'd, and the Outlawry ap-

ear of Record.

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Not only an Appearance in Deed, but a urchase of a Supersedeas out of the Court here the Record is, which is an Appearnce of Record, avoids an Outlawry, wheer it be delivered to the Sheriff before the unto exactus, or after.

(a) If Outlawry be pleaded in Disability, (a) 14 E. 3.

3

d the Plaintiff demand a Day to answer it, 27. d before the Day purchase a Pardon, he is

stored by the Pardon.

Where the Ground of the Action is forted by Outlawry, it may be pleaded in ar; as in Debt, Detinue, Oc. but where eGround of the Action is uncertain, and bjur t forfeited by Outlawry, it can be pleadin Disability only.

Process

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Process of Outlawry lies in all Actions quare Vi & Armis, by Common Law, and by Statute, in Debt, Detinue, Account Covenant, Annuity, Case, &c.

Formerly any one might execute an Outlaw, now the Sheriff only, tho' he be out

lawed for Felony.

Action, and if he do, the Ten't or Defendant Action, and if he do, the Ten't or Defendant of the function of the K.'s Ligeance, and demand Judgment, &c. But it is not enough to say that he was born out of the Realm, for on may be born out of the Realm, as in he land, fersey, &c. and yet within K.'s Ligeance. And the Child of a Merchant, is considered to the constant of the Realm.

601.

Denizen, either signifies a natural bor Subject, or one priviledg'd by K.'s Letter Patents; these may be either general, granting quod ille in omnibus habeatur, reputetur, in Etetur, & gubernetur, tanquam ligeus most control of the only.

Liege Man, or Subject, to his Liege Lor or Sovereign. And Ligeus is ever taken to

a natural born Subject.

Ligeance is either perpetual, or temporary the first is either by Birth, quam nemo strare potest, nec Patriam exuere, or by Gra of Naturalization, or Denization. Il second is either local, which lasts as lot and an Alice lives under K'a Protection

Vid. up.11. fecond is either local, which lasts as lot as an Alien lives under K.'s Protection and makes him indictable of High Treason

2

uod contra ligeantia sua debitum, &c. or linited, as when one is made a Denizen on Condition, or for Life, or in Tail Male, or pecial Tail, &c.

An Alien being a Prior may fue in Right fhis House, and he may (a) sue as Admini- (a) Cro. Ca. rator, &c. And an Alien, whose K. is in 9. eague with ours, may bring personal ctions in his own Right, tho' he can ring no real Action; but an Alien Enemy an bring neither a real nor personal Actin, and if he do, the Ten't or Defendant ay either plead in Disability, or conclude

the Action.

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4 Persons attainted by Judgment against em on a Writ of Pramunire, are disabled bring any Action, for by fuch Judgment bey are out of K.'s Protection, forfeit all teir Lands in Fee-Simple, and Goods, and e subject to Imprisonment for Life, and, former Days, they might have been kild by any One, as being Enemies to K. lo every one attainted of Treason, or Femy, is disabled to sue any Action, for he dead in Law.

There is a general Protection of K. which Lor tends to all his Subjects, Denizens, and liens within the Realm, and is lost by degment in Pramunire; and there is a parular Protection by Writ, of which there

etwo Kinds.

10 9 The first is for the Safety of one's Person, d Possessions, from unlawful Violence, hich is called a Protection cum claufula nomus, from the Word Nolumus in the reaso nit, by which fuch Protection is granted;

and this is no more than the Law implies in K.'s general Protection, and all Writs for fuch Protection, are of Grace, faving one, which a spiritual Person may, of Right, sue forth for himself, and his Farmers, that their Goods be not taken against their Will, by K.'s Ministers, &c.

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The Second is for the staying of Suits, and is call'd a Protection cum clausula volumus, from these Words in the Writs by which it is granted, volumus quod interins set quietus de omnibus placitis & querelis.

Of these Protections for the Staying of Suits, there are sour Sorts. 1. Quia Projecturus. 2. Quia Moraturus, (viz. for one that is to go, or stay, beyond Sea, on K.'s Business.) 3. Quia indebitatus nobis existing. 4. Quia imprisonatus ultra mare, for one sent into K.'s Service, beyond Sea, who is imprisoned there.

As to the Protections Profestura, & Moratura, these nine Things are to be ob

ferved.

nust be set forth in the Writ, that it may appear to the Court that they are granted for the publick Good, and the Service of the Kingdom, either in War, or in Nego tiations of Peace, &c.

2. They may be granted to Men within Age, and to Women in three Cases, qui lotrix, seu obstetrix, seu nutrix; but not to Corporation Aggregate, because it is inv. Vid. supra, sible. A Protection granted to the Hu

band, shall serve for the Wise.

Regularly a Protection can be cast only for the Ten't or Defendant, but not for the Plaintiff or Demandant, or one that is an Actor in nature of a Plaintiff, as an Avowant, or the Garnishee after Appearance, &c. But it may be cast for a Vouchee, Ten't by Receipt, or Aid Preyer, when the Demandant has granted the Voucher, &c. whereby they are made privy. It may also be cast for the Garnishee, at the Day of the Return of the Scire Facias against him. But it cannot be cast for an Officer of K.'s Receipt, or of a Court of Record whose Attendance is necessary.

A Protection cast by one Defendant, puts the Plea without Day for all, except in Trespass, and Actions in the Nature of Trespass, where each may answer without the other; and in Trespass, Protection for one serves for all, if they join in Plea, or if they plead several Pleas, and one Venire is

awarded against all.

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3. By 13 R. 2. 16. Protectio profectura is not to be purchas'd hanging the Plea, except for a Voyage Royal, but Protectio Moratura may.

A Protection can't be allow'd, but when the Party has a Day in Court, therefore it can't be cast against any Writ of Execution,

except a Scire Facias.

A Protection cast at Nisi prius shall save a Default, tho' it be repeal'd before the Day Vid. insta, in Bank, because it was once well cast; but 205. if it be afterwards disallow'd for Variance, the Default is not sav'd.

K 2

131.

If a Man have a Protection, and not withstanding plead a Plea, yet at another Day of Continuance it may be cast.

Neither of these Protections shall endure more than a Year and a Day after the Test, if they are tested 7 fan. and allow'd pro und Anno, the Re-summons shall be 8 fan. the next Year, yet that is the last Day of the Year.

4. These Protections must be to some Place out of the Realm, as Scotland, or Ireland, &c. Protectio quia moratur Supra altum

mare is not good.

5. Neither of these Protections are allow'd in Actions that touch the Crown, as Appeals of Felony or Mayhem; not where the K. is sole Party, nor where he and a Subject are Parties, nor in Quare impedit, nor Assis of Darrein Presentment, for the Danger of a Lapse; nor in Quare non admiss, because it is grounded on the Quare Impedit; nor in Assis of Novel Dissessin, nor in Certificate of Assis, because it is grounded on Assis of Novel Dissessin, which anciently was called Festinum Remedium. Nor in Dower unde nihil habet, because the Demandant has nothing to live upon.

An Infant was vouch'd, a Protection was cast for him at the Pluries venire facias ad habendum visum, and disallow'd, for his Age must be judg'd by the Inspection of the Court, and the End of such Process is only to view him for that Purpose, and his bare Appearance is sufficient to give the Court Satisfacti-

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on. An Infant brought a Writ of Error on a Fine, and fued a Scire Facias against the Conusee, for whom a Protection was cast, and the Court examined, and recorded the Plaintist's Age, and then allow'd the Protection, and the Nonage being recorded, the Heir of the Infant may reverse the Fine, but if the Plaintist had died before his Age had been inspected, the Fine could never have been revers'd:

By 23 H. 8. 3. Protections are ousled, in attaint, and by 1 R. 2. 8. In Actions for Victuals bought for the Service mention'd in the Protection, and in Pleas of Trespass, &c. done since the Date of the Protection. And by the late Statutes, they are generally expressy ousled, in personal Actions given

by the same Statutes.

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If a Writ of Deceit be brought against one for casting a Protection on an undue Surmise, the same Protection may be cast again, for it gives a general Freedom from all Suits, till the Time be elapsed.

6. They must be under the great Seal,

and generally directed.

7. Any Court (whether it be of Record, or not,) wherein they are cast, may allow

or disallow of them.

8. An Infant, Feme Covert, or Monk, may cast a Protection, so may the Party himself, but if he cast it himself, he ought to shew Cause why he ought to take Advantage of it, but a Stranger needs not shew any Cause.

9. They may be avoided three Ways.
1. On the Casting of them before they are

K 3 allow'd.

allow'd. 2. They may be disallow'd after. wards for Variance betwixt them and the Record; or because they lie not in the Action, or for that the Party has no Day to cast them in. 3. If the Party go not to the Service for which they are granted, they may be repeal'd by Innotescimus; but, being Records, they can't be avoided by Ayer. ment.

The 3d Protection, cum Claufula volumus, is for the King's Debtor; but now by 25 E. 3. 19. a Creditor may have Judgment against the King's Debtor; but he shall not have Execution unless he will take upon him to pay the King, and then he shall have Execution for the King's Debt as well as his own.

The fourth Protection, cum Claufula volamus, is quia Imprisonatus, &c. Neither this, nor the Protection last mentioned, have any

certain Time limited in them.

5. He that is profes'd of Religion in any part of England, is disabled to bring any Action; but one profess'd in foreign Paris is not disabled, because his Profession cannot be tryed by the Ordinary's Certificate, which is the only Tryal allow'd of by Law in this Cafe.

A Man is faid to enter into Religion at his first coming, and living under Obe dience to the Rules of some Order, but he Vid. supra, is not profess'd till he has taken the

Vow.

A Man profess'd, is dead in Law, and his Heirs, Executors, and Administrators represent him as if he were dead in Deed

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His Heir shall be bound by Warranty made by him, and shall have a Writ of Mortdancefter, (and the Writ shall fay, fi D. Pater, Gr. die quo habitum Religionis assumpsit, in F. N. B. quo habitu Professus fuit, Gc.) and if he be 196. a. within Age, he shall be in Ward, as to Lands holden by Kt.'s Service. If one owe Money to the Abbot of D. and after become Abbot of D. he may fue his own Executors.

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But if Ten't T. discontinue, and enter into Religion, his Islue shall not have a Formedon till his natural Death, for no Man by his own Act shall derogate from his own Grant. And if the Husband be profes'd, his Wife shall not be endow'd till his natural Death; and if the alien Land which the has in her own Right, and he be afterwards deraign'd, he shall avoid the Alienation; for the Wife shall have no Benefit by his entring into Religion, because without her Confent, he would not have done it; but some have faid, that either Husband, or Wife, ante carnalem Copulam, may enter into Religion without the others Confent, but after, they cannot without mutual Consent. If a Diss'or enter into Religion, and become profesid, yet the Dissee may enter, notwithstanding the land descends to the Heir of the Dissor, for no one, by his own Act, shall prejudice a Stranger's Right.

The Head of a religious House, tho' he be profess'd, may purchase, sue, and be sued

for any Thing touching the House.

If one profess'd be Executor, Bishop, or Parson, he may sue in autre Droit. Is held K.'s Farmer, he may have an Action touching the Farm. If a Monk be beaten or imprison'd, he and the Abbot may join in an Action, and the Writ may either conclude ad damnum ipsius Prioris, or ipsorum. In the same manner if he be falsy and maliciously indicted of Felony, they shall join in a Writ of Conspiracy.

Writ of Conspiracy.

A Wise is disabled to sue, or be sued.

without her Husband, notwithstanding the Husband be banish'd for a Time, which some call a Relegation; but the Wise of one that has abjur'd the Realm, or of one perpetually banish'd, by Parliament, may sue, or be sued, as a Feme Sole, and shall recover her Lands alien'd by her Husband. Note, That one can't be absolutely banish'd, so as perdere Patriam, by any but by Parliament K.'s Wise is an exempt Person from him and may purchase, sue, or be sued, without him.

She can't be amerc'd, and therefore shall

find no Pledges.

(a) Q. She shall not be (a) barr'd by Plenart 2 Inst. 361. pleaded against her in a Quare Impedit.

She is not within 1 H. 4. 6. which enacts
That in all Petitions to K. for Grants of Land
&c. Mention must be made of the Value there
of, and of what former grants the Petitioner
have had.

Her Bailiff, in an Action concerning the Hundred, shall say, in contemptum Domini Re

gis & Regina.

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She pays no Toll, nor is she bound by the Statute of quia Emptores to distrein pro Rata; nor is she within the Statute of Marlbridge, cap. 4. which prohibits the Driving a Distress into another County.

It is Treason to compass her Death, and none can marry the Queen Dowager with-

out K.'s Licence.

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But K.'s Wife shall be fued by a Pracipe, not Petition, and a Protection shall be allow'd

against her, but not against K.

6. A Person excommunicate is disabled to sue any Action, and if he do bring any, the Ten't or Desendant may plead that he is excommunicated, and shew the Bishop's Letter, under his Seal, witnessing the Excommunication, and demand Judgment is he shall be answered. But a Man shall not be disabled by Excommunication promounc'd by any foreign Bishop; nor shall one excommunicate by an English Bishop, be disabled to bring an Action against the same Bishop.

There is the greater, and the lesser Excommunication; the greater excludes a Man from the Communion of the Faithful, as well as of the Sacraments: The lesser excludes a Man from the Communion of the Sacraments only: But either of them disables

the Party.

A Corporation Aggregate can't be disabled by Excommunication of the Members, for the Body Politick, which is the Plaintiff, rest only in Consideration of Law, and can't be excommunicate, and can only appear by Attorney. But where the Plaintiff is excommunicate,

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municate, he is disabled to fue either in his own Right, or anothers, as Executor, Parfon, Gc. for they which converte with one excommunicated, are excommunicated alfo.

Anciently an Official might certify an Excommunication, but now none can certify it but the Bishop himself, (unless he be beyond Sea,) or one that has ordinary lurisdiction, and is immediate Officer to the King's Courts, as Arch-deacon of Richmond, or Dean and Chapter in Time of Vacation

A Bishop's Certificate under his Seal to mains good after his Death; but a Certificate by a Bishop, that another Bishop has certified him that the Party is excommuni-

cate, is not good.

None but the King's Courts of Record, as King's Bench, Common Pleas, Justices of Gaol Delivery, and the like, can write to the Bishop to certify any Ecclesiastical Matter. But no inferior Court, as of London, or any other Corporation, can doit but the Plea must be removed into the Common Pleas, and that Court shall write to the Bishop, and remand the Plea. For this Cause, Conusance shall not be granted in a quare Impedit: And a quare Impedit of a Church in Wales did lie in the County next adjoining, because the Lordships Mar chers could not write to the Bishop. Bu K.'s Justiciar in Wales had power to write ! the Bishop, therefore a quare Impedit so Vaug. 411. Churches in the ancient Shires, which were within his Jurisdiction, did always lie i Wales.

Cro. Ca.

If the Excommunication pleaded can't be denied, the Writ shall not abate, but Judgment shall be that the Ten't or Defendant shall go quit without Day, and when the Plaintiff is absolv'd, he shall have a Resummons, or Re-attachment, and bring the Defendant into Court again; (so shall he also where the Plea is put without Day for other Causes, as Non venue of the Justices, Protection, Essoign de Service le Roy, &c.)
But in all the other five Cases where Disabi-Vid. supra, lity is pleaded, the Writ shall abate, if the 191.

Matter pleaded can't be gainfaid.

Dies in Law is the Day of Appearance of the Parties, or the Continuance of the

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In real Actions there are dies Communes, Marl. 12. for which fee the ancient Statutes. 32 H. 8. 21.

In all Summons on the Original, the Par-16,17C.1.6.

ty must be summon'd 15 Days before the
Day of the Return of the Original, and the
Statute of Articuli super Cartas, ca. 15. which Vid. 2 Inst.
requires that in all Summons, and Attach-567
ments, in Plea of Land, there shall be contain'd the Term of 15 Days, was in Assir-

mance of the Common Law.

If the Original be return'd Tarde, (i. e. deliver'd to the Sheriff so late that he had no Time to serve it,) in which Case an Alias Summoneas goes forth, there must be nine Return-Days inclusively between the Teste and Return thereof, as there must be in all other judicial Process in real Actions. But if one demand Conusance of Pleas to be holden within his Mannor, Process shall be awarded there from 3 Weeks to 3 Weeks.

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K.'s Bench may proceed, de die in diem, when the Offence is committed in the County where they Sit, but when it is remov'd by Certiorari, there must be 15 Days between every Process, and the Return thereof.

2. There is Dies Specialis, as in an Affile, in either Bench, there need not be 15 Days after the Attachment, before the Appearance; but before Justices assign'd, there must; and generally in Assists the Justices may give any special Day, out of Term as well as in Term. And in Assis, if the Parties be adjourn'd to a common Day, as Quindenam Pasch. &c. they are not demandable till the fourth Day after, but when they are adjourn'd to a certain Day of the Week, as Monday, Tuesday, &c. they are demandable on that very Day.

Upon an Imparlance, or after Demurrer, the Court may give any special Day, so it be in Term. In a Scire Facias on a Fine, or Recovery in a real Action, because they are Writs of Execution, and in all judicial Writs, Process against an Insant to judge of his Age, Process when the Husband prays in Aid of his Wise, or Pone at the Desendant's Suit, there need not be 15 Days.

3. There is Dies Gratia, which is regularly granted by the Court, at the Prayer of the Plaintiff, or Demandant, but never at the Prayer of the Ten't, or Defendant; but this shall never be granted where K. is party by Aid Preyer, or when a Peer is Ten't or Defendant. Sometimes the Day that is quarto Die post, is call'd Dies Gratia, for no Default

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Default is recorded till that is past, except in a Writ of Right; but in all Cases the very Day of Return is the Day in Law, and to that, the Judgment has Relation.

Where a Man by not appearing will be subject to great Lois, as of Issues, or his Freehold, or to corporal Pain, as Imprisonment, he may appear on the Day which he has by the Roll, on which the Writ was awardd, tho' the Sheriff return not the Writ.

The Day of Nis Prius, and the Day in Bank, are esteem'd in Law as one Day, for some Purposes; e. g. If the Defendant make Default at Nisi Prius, and an insufficient Pro-uction be cast for him, by Reason whereof the Inquest is not taken, and at the Day in Bank the Vid. supra, Protection be disallow'd, the Inquest shall be there 195. taken for Default, whether the Defendant appear Bro. In-at the Day in Bank, or not, but without some such special Reason, the Law looks on them to be so it distinct Days, as they really are.

There are Dies Furidici, & Dies non Furidici, all Days in Term are Dies Juridici, but no Days out of Term, (except it be in Affi-28s.) All Sundays, Ascension Day, Puristcation, All-Saints, All Souls, and St. John

fen-Baptist's-Day, are Dies non Juridici.

The natural Day contains the Space of 24 Hours, from 12 at Night, to 12 the next; therefore in Indicaments of Burglary the the Offence is faid to be committed in Nocte mustem Diei. 91 Days make a Quarter of a Year by legal Computation, and 182 Days make half a Year, for the Law reckons not the odd Hours. (a) In the Leap-Year the (a) Vid. 21 Day encreasing, and the Day next prece- de anno Bis-

dent, Sextili,

dent, shall be reckoned but as one. Regularly 28 Days are accounted a Month in Law, except it be as to the Accounting of a Lapte, in quare Impedit, in which Case the Law computes by Kalender Months.

A Leper, remov'd by the Writ de Leprofi amovendo, may fue, but he must appear by Attorney; and an Ideot, Madman, &c., may at this Day bring an Action in their own Names, and prosecute it by others An Infant may sue by Guardian, or Prochein Amy, by W. 2. 15. but he shall de-

fend by Guardian only.

If a Villein become a Monk profess'd, the Lord can't take him out of the House, but he shall have an Action against the Sovereign of the House. But if such Villein he afterward deraign'd, the Lord may seise him again; and he may seise a Secular Priest being his Villein, notwithstanding his holy Orders. The Marriage of a Secular Priest at Law was not void, but voidable by Divorce, which is it were not had in the List of the Parties, could not be after the Death of either of them. But the Marriage of a Man or Woman profess'd was wholly void, and the Issue Bastards.

And if a Niese be married without Licence, she is infranchised during the Coverture, and the Lord can't seise her, but he may have an Action against the Husband; and if she were Regardant, and the Lord make a Fcossment of the Mannor to which, &c. and the Husband die, the Fcosfor shall have the Nies; for during the Coverture she was severed from the Mannor,

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and the Lord's Interest in her was rather in Nature of a Possibility, than of a Reversion.

K. may infranchise a Villein by making him a Knight, but the Lord may have an Action against them that were the Means

thereof.

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If the Heir of Land holden by Kt. Service had enter'd into Religion before his Age of 14, the Lord should have had a 4 H. 4. 17. Writ of Ravishment of Ward against the Sovereign. But the Land should have descended to the next Heir, and the Lord had no Remedy as to the Lois of the Land, for it was damnum absque Injurià.

Manumission is properly when the Lord makes a Deed to his Villein to infranchise him, but there are also many implied Manumissions, as Knighthood, &c. If a Villein remain in ancient Demesne a Year and a Day, the Lord can't feife him there. If he be a Priest in K.'s Chappel, he can't seise

him in K.'s Presence.

If the Lord make an Obligation, or Lease Y. to his Villein, or infeoff him, or do any Act that transfers a fix'd Estate, or gives a Caufe of Action to the Villein, he thereby Infranchites him. But if the Lord bring an Appeal of Felony against his Villein who has been indicted of the same before, he does not infranchife him thereby, for he cannot have him hang'd without it, and if the Villein be acquitted on the Appeal in that Case, he can't recover Damages against the Lord. But if the Villein against whom the Lord brings such Appeal were not indicted before, and acquitted on

on the Appeal, he shall be free, because W. 2. 12. gives Damages to the Appellee not indicted before, which in this Case would be Illusory, if the Villein should still continue such.

If the Lord make a Lease W. to his Villein, or make a Release unto him having nothing in the Land, which is merely void or attorn to a Grant made unto him, which transfers nothing from the Lord, but only make good anothers Grant, he does not infranchise

him thereby.

If Ten't T. of a Mannor, to which a Villein is regardant, infeoff the Villein of the Mannor, the Issue may bring a Formedon against the Villein without infranchising him, for he can't feise him till he has recover'd the Mannor. So if the Ten't of Kis Service Land had infeoff'd a Villein and another on Collusion, the bringing of a Writ of Ward against them did not infranchife him, for if the Lord should have entered for the Moiety belonging to his Villein, his Seigniory would have been fulpended, and he could not have had a Writer Ward against the other, in respect of the Lords actual Seisin of the Said Moiety. If the Lord levy a Fine to a Villein of Land in ancient Demesne, this infranchises him, tho it be afterwards revers'd by a Writ of Decent, for it was not void, but voidable.

If the Lord bring an Action real, or perfonal, against his Villein, and recover, or be nonfuit after Appearance, he thereby infranchises him, because he might imprison him, and seise his Goods without Suit; but

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139.

if the Lord be nonfuit before Appearance, the bare bringing of the Writ does not infranchise the Villein, (a) because a Stranger (a) Vid.Co. L. 145. a.

may bring it in the Lord's Name.

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Nonfuit is always when the Demandant, or Plaintiff, should appear, and makes Default. A Retraxit is when he is present in Court; (as Regularly he is ever, by intendment of Law, till a Day be given over, unless it be when a Verdict is to be given, and then he is but demandable;) and this is either Privative, when the Entry is, quod solenniter exactus non venit, sed a secta sua in contemptum Curia se Retraxit, Gc. or Positive, when the Entry is, quod fatetur se, sen cognoscit se, ulterius nothe prosegui, Gc. It is call'd a Retraxit, because that is the effectual Word used in the Entry. It is a Bar to all Actions of like Nature or inferior.

Nonfuit before Appearance is never Peremptory, and regularly also Nonsuit after Appearance is not, but in a quare Impedit it is, and in that Action a Discontinuance is also Peremptory, because the Defendant shall have a Writ to the Bishop. Nonsuit after Appearance is also Peremptory in a Nativo habendo, and the Nonsuit of one Plaintiff in that Action nonfuits both, in favorem Libertatis; for in a libertate Probanda, such Nonsuit is not Peremptory, neither is the Nonfuit of one Plaintiff the Nonfuit of both. And it is Peremptory not only in an Appeal of Felony, but of Mayhem also, for the Words therein are, Felonice Mayhemavit; but the Nonfust of the Plaintiff in an Appeal is not fuch an

Acquittal on which the Defendant shall to cover Damages against the Abettors by W. 2. 12. unless, after the Nonsuit, he were 2 Inst. 385. arraigned at K.'s Suit upon the Appeal, and acquitted. Such Nonfuit is also Peremptory in an Attaint, but a Discontinuance in an Attaint is not, because there is a Judgment given upon the Nonsuit, but not upon the Discontinuance.

> In personal Actions, brought by any but Executors, the Nonsuit of one Plaintiff is the Nonfurt of all; except in an audita Omrela, which is favour'd, because it discharges a Man from Execution; but in real, or mix'd Actions, the Nonfuit of one Demandant is not the Nonsuit of both, but he that made Default shall be summon'd and fever'd.

One may be fever'd two Ways. I. By Summons ad sequendum Simul, where he never appear'd. 2. By the Courts Award of Nonfuit without any Summons, and this is always after Appearance.

In a real Action by feveral Precipe against two or more, Nonsuit as to one, is a Nonfuit as to all, because as to the De mandant it is but one Writ under one Tefte.

Writs of Error, Attaint, Scire facias, Compelor follow the Nature of those Actions whereon they are grounded.

K. can't be nonsuit, but the Attorney bish General may enter an ulterius nonvult Proje land i qui, but an Informer qui tam, &c. may be tutes nonfuit.

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After demurrer join'd, the Plaintiff may e nonfuit, but by 2 H. 4. 7. at a Day gien by the Judges to be advis'd after Verict, he shall not.

After an Award to account, the Plaintiff may be nonfuit, because it is but an Inter-

ocutory, and no final Judgment.

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A Lord can't prescribe to have a Fine of very Ten't that marries his Daughter without his Licence, for it is against the Freedom of a Freeman, that is not bound thereto by particular Tenure; but there may be a Custom in a Mannor that every Ten't that olds in Bondage, the Freehold being in he Lord, shall pay such Fine, tho' his Perion be free.

But Gavelkind stands with some Reason, or every Son is a Gentleman alike, and Burgh Engl. has its Reason, for the Young-this least able to take Care of himself. In ome Mannors the eldest Daughter or Sister ione shall inherit, and in some Gavelkind attends to Brothers as well as Sons.

A Man can't prescribe to distrein Cattle

Damage Fesant, and detain 'em till satisfied De for the Damage at his Will; for it is gainst Reason that he should be Judge in is own Cause. Therefore a Fine elevied before the Bailiffs of Salop was revers'd, be-

K. John, and his Son H. abolish'd the they hish Customs, and made the Laws of Engrole and in Force there; it is said, that our Statutes bind them not, quia non habent Milites
in Parliamento, and this is true as to all those
in which Ireland is not particularly named: 140,

142.

But by Poyning's Law, all Statutes made in England before the 10th Year of H. 7. are of Force in Ireland.

## Of Rents.

OF Rents, there be three Sorts. 1. Rent Service. 2. Rent Charge: 3. Rent Seck. To which may be added Rent referr'd on a Lease W. called Rent distreinable of Common Right, which is not properly Rent Service, because Fealty, which is incident to all Rent Service, is not incident to Rent is referv'd out of the Profits of the Land, and is not due till they are received It may by Act of Law issue out of Services as a Seigniory does out of a Mesnalty, immediately, and mediately from the Land. Any Thing may be referv'd that lies in Render, Office, or Attendance, but not the Profits themselves.

One can't distrein for Rent by Night, but

for Damage Fefant one may.

Rent Service is where Ten't in Fee holds of his Lord, or Donce, or Leffee L. or T. hold of him in Reversion by Rent, and it is so called, because Fealty is incident to it Where the Estate on which it is reserved may pais without Deed, it may be referred without Deed.

No Rent reserv'd at this Day on a Gift, or Lease, is a Rent Service, unless the Rev'n be in the Donor or Leffor, but it we needs not be immediately expectant on the wm needs not be immediately expectant on the Estate of the particular Ten't in Possession ay, And, before the Statute of quia Emptores,

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one had made a Feoffment in Fee, or a ease L. Rem'r in Fee, reserving Rent, such ent had been a Rent Service. And if he ad made no Refervation, the Ten't should we holden of him by the same Services by hich he held over.

Fealty is an Incident inseparable from the

eversion, but the Rent is separable.

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If a Man at this Day referve to him and s Heirs a Rent upon a Feoffment, or any her Conveyance, whereby the whole late in Fee passes, with a Clause, That it all be lawful for him and his Heirs to di-rein; fuch Rent is a Rent Charge, because e Land is charged with fuch Diffress by orce of the Writing only, and not of comon Right. If it be to the Value of the h Part of the Land, or more, it is call'd. Fee Farm.

If one feis'd of Land grant a Rent out of in Fee, T. L. Gc. with a Clause of Direfs, fuch Rent is also a Rent Charge: ut whether a Rent be referv'd on a Feoffent, or granted by the Ten't out of Land, there be no Clause of Distress, it is a ent Seck, and Remediless, unless the Feofor or Grantee can gain a Seisin thereof.

If a Rent be granted payable at 4 Feasts, distant for Default of Payment on Demand shall be lawful to distress; in this Case, a

Git, emand made by the Grantee after any of the Days is good to enable him to diffrein, at it where a Re-entry is referved for Non-in the syment of Rent on Demand, on fuch a synthety of the Demand must be made on the vertices, Day.

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Rent can't be referv'd, or granted out of Vid. fupra, an incorporeal Inheritance, and it can only be referv'd on a Conveyance by which an Estate passes, and therefore it can't be referv'd on a Release by Diss'ee to Dissor. But it may be claim'd by Prescription.

It is faid, that a Rent may be referr'd on. a Feoffment by Deed Poll, because the Words by which it is referv'd are the Words of the Feoffer, and the Feoffee agrees to it by Accepting of the Deed, and for this Cause a Writ of Annuity will not lie for fuch Rent, whether it were referr'd by Deed Poll, or indented, nor will it lie for Rent granted for Owelty of Partition, (for it is merely in the Realty, and is in Nature of the Land descended.) Nor for any other Rent which might at Law have been granted without Deed, as Rent granted to a Woman in lieu of her Dower, whether it be granted by Deed or without, because such

Vid. Co. L. Rents are granted in lieu of a Right which the Grantee has to the Land by Act of Law, and therefore are vested in the Grantee in such Plight as the Land did, or ought to have done.

> An Annuity is a yearly Payment of certain Sum in F. T. L. or Y. charging the Grantor's Person only; and not only the Grantee in Fee, but his Heirs, and Assigns may have a Writ of Annuity against the Grantor, but not against his Heir, unle he be specially named in the Grant. A Grant of Annuity by two, gives but on Action against both, unless there be th Words, obligamus nos & utrumque nostrum, i

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he Grant, which give an Action against ither of them, but one Satisfaction only.

The Grantee of a Rent Charge has his election to bring a Writ of Annuity against he Grantor, or to distrein for the Arrears f the Rent. For wherever a Man has two temedies for the fame Thing, he may chuse ther of them. And if the Ten't of the and, and a Stranger grant a Rent out of e Land, tho' this be prima Facie, the rant of the one, and the Confirmation of e other, yet the Grantee may either distrein the Rent, or have a Writ of Annuity ainst both. But if the Grantee of a Rent harge bring a Writ of Annuity and count ereon, he can afterwards bring a Writ of muity only; so if he distrein for the ent, and avow for it in a Court of Rerd, or bring an Affile for it, and make a. aint thereon, his Election is determin'd, d he can afterwards take it only as a int; for Electio semel facta non patitur ressum. If a Rent Charge be granted to and B. and their Heirs, B. distreins, and ows for himself, and makes Conusance A. and dies, this binds A. fo that he never after have a Writ of Annuity. twhere a Man may have an Action of count, or Debt, and brings an Action of ly the count and is nonfuit therein after Ap-Assigns ions charge the Person only. nst the unle int. A

f the Wife of the Grantee of a Rent in but on be the annot plead in Bar of her Dower, that claims it as an Annuity, for he can't

determine his Election by Claim, but by fuing a Writ of Annuity, neither can he have it as an Annuity for the 2 Parts, and a Rent for the 3d.

As to Elections, these Things are to be

observed.

1. Where no Interest passes to a Granter before Election made by kim, (as where I grant to a Man one of my Horses in my Stable,) the Election must be made in the Life of the Parties, or the Grant becomes void by his Death.

e. But where an Interest passes, as who one Thing is granted, and the Grantes is Election to take it one Way or another, (by Way of Use executed by the Statute or Conveyance at Common Law,) there the Election

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may be made by the Heir or Executor.

3. Where an Election is given to fever
Persons, Election first made by any of the
Parties shall stand.

4. Where an Election is given of the feveral Things, he that is to do the fir Act shall have the Election, as if one gra an Annuity, or a Robe yearly, or make Lease reserving a Rent of 20 s. or a Royearly, &c. the Grantor or Lessee, becauthey are to be the first Agents, by Payme of the one, or Delivery of the other, my chuse to pay either of them; but if I g you one of my Horses in my Stable, or Loads of Wood to be taken in such a Playou may chuse which you like best, in this Case I am not to be the first Ag by Delivery of them, but you, by taking them,

2 Rep. 36.

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s. He that has fuch Election may often lose it by his own Default, as if A. grant to B. 20 s. or a Robe, to be paid once at fuch a Feast, and fail of Payment at the Day, B. may bring his Action for either ; fo if he infeoff B. of two Acres, to hold the one for Life, the other in Fee, and B. before he has made Election to have a Fee in one of them, make a Feoffment of both, the Feoffor may re-enter into either of them for the Forfeiture. But if one grant an Annuity, or a Robe payable at the Feast of Easter. for Y. L. T. or in Fee, and fail of Payment, the Grantee shall not have his Election of either of them, but must bring his Writ of Annuity in the Disjunctive, for if he should bring it for one of them without mentioning the other, the Grantor would in this particular Case lose his Election for ever afier, because after Judgment once had on a Writ of Annuity the Grantee can't have a Writ of Annuity afterwards, but only a Scire Facias on the faid Judgment; yet it fems that if a Lessor reserve yearly a Rent, or 1 Rolls A. a Pair of Spurs, and the Lessee fail of Payment 725. at the Day, the Lessor may distrein for either of Co. L.90.b. them, for in this Case the Lessee loses his Election only Pro hac Vice. Wherever Goods are distrein'd, the Own-

trimay either replevy them by Writ, which is by Common Law, or by Plaint, which was given by Marlbridge 21; and the one grant a Rent with a Clause of Distress, and grant further that the Distresses taken shall be Irreplevisable, yet may they be replevied,

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for fuch a Restraint is against the Nature of a Distress, and no private Man can alter the Common Course of Law.

To replevy Goods, is to deliver them to the Owner upon Pledges to profecute, (which are required by Common Law,) and also Pledges to make a Return of the Things distreined if Judgment shall be against him, that brings the Replevin, which are required by W. 2. 2.

The Sheriff may take a Plaint, by Force of the faid Act, out of the County Count, and make Replevin presently, for it would be inconvenient to stay till the County Day.

He that brings a Replevin, must eithe have an absolute Property in the Goods distrein'd, or at least a special Property, as in Goods taken to manure his Lands, and such like: And if the Beasts of several Men be taken, they can't join in a Replevin. If the Villein's Goods be distrein'd, the Lord may replevy them, but if they be taken by a Trespasser, claiming a Property in them, he can't replevy them, because the Villein has

Fiez Reple- but a Right.

VIN 43.

If the Defendant upon Plaint made claim Property, the Sheriff can't proceed, but the Plaintiff must sue a Writ of Proprietate Probanda, (because Property can't be tried by by Writ,) and if it be found thereupon so the Plaintiff, the Sheriff must deliver the Distress to him, but if it be found for the Defendant, the Sheriff can do nothing. But this being but an Inquest of Office, the Plaintiff may afterwards replevy by Writ, and if the Sheriff return the Claim of Property, it shall be put in Issue, and determined in the Common Pleas.

None can claim Property in a Replevin by his Bailiff, or Servant, because he should be fined for his Contempt, if it be found against him, which can't be done in this Case, because nemo punitur pro alieno delicto. But this must be understood where Replevin is by Plaint in the Country, in which Case a false Claim of Property is fineable, in respect of the Delay, but one may claim a Property in a Court 1 Lev. 90. of Record by a Bailiff.

If the Ten't's Cattle be diffrein'd, and the Mesne, who is bound to acquit him, put in his Cattle in lieu of the Ten'ts, he shall bring a Replevy for them, tho' they

were not distrein'd.

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If one grant a Rent Charge with a Provih, that neither the faid Grant, nor any Thing therein contained, shall charge his Person with a Writ of Annuity, by such Proviso the Land only is charged. And tho' there be two Negatives in fuch Proviso, yet they shall not make an Affirmative against the manifest Intent of the Party. But a Proviso that would take away the whole Effect of the Grant, as if one grant a Rent out of Land in which he has nothing, provided that it shall not charge his Person, is void. So is a Proviso that is repugnant to g. Bu one grants a Rent Charge out of Land, pro-Plain and where a Provise is good at first, and

afterwards it happens that the Grantee, or his Executors can have no other Remedy but that which was restrain'd, they shall have it notwithstanding such Restraint; as if A. grant a Rent to B. for L. with a Pro. vifo that it shall not charge his Person, yet B.'s Executors shall have an Action of Debt for the Arrears during B.'s Life.

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If A. grant to B. that if B. be not yearly paid so much at Christmas, that then he may distrein for it in the Mannor of C. or if he bind his Mannor of C. and all his Goods in it to the Payment of a yearly Rent to B. by fuch Grants B. has a good Rent Charge and may diffrein for it, notwithstanding these Words are added, ad distringendum per Ballivam Domini Regis, for the Distress is for the Benefit of the Grantee, and if the Kis Bailiff distrein, he does it as Servant to the Grantee, and what the Grantee may do by his Servant, he may do by himself, or another, but B. can't have a Writ of Annuity by Force of fuch Grants, because A does not grant to him any Annuity, but only that he may diffrein, Ge.

Notwithstanding such Grant of a Distress for Rent in the Mannor of C. shall amount to a Grant of a Rent out of C. because otherwise the Grantee could not have an Affise; yet if one grant a Rent out of D and a Distress for it in C. the Rent wholly issues out of D. and C. is only charged with

the Distress, for these Reasons.

1. Quoties in verbis nulla est ambiguitas, ib nulla expositio contra verba expressa fienda est. 2.4

2. If the Rent issued out of C. the bringing of a Writ of Annuity would not dilcharge it, for fuch Writ would lie upon the expreis Grant out of D. without any dependance on the Grant of the Distress in C. and then the Grantor would be twice charg'd.

3. It is allow'd that it would only iffue out of D. if D. and C. were in different Counties, and the Reason is the same where

they lie in one.

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4. If D. be evicted by an elder Title, or fthe Grantee purchase Part of D. the Rent sextinct, but it shall not be extinct by his Purchase of Farcel of C. as it would be, if i issued out of it.

One entire Rent can't be partly a Rent Charge, and partly a Rent Seck; therefore, fa Rent be granted out of three Acres with Chuse of Distress for the Whole in one of them only, this is a Rent Seck for the Whole. So if Rent be granted in Fee to wo, with a Clause of Distress to one of hem only; for it can't be a Rent Charge as that hem only; for it can't be a Rent Charge as to one, and a Rent Seck as to the other; let the Distress is an Appurtenant to the ount Rent, and if he to whom it is granted die, thall go to the Survivor, and if both of hem grant the Rent over, the Grantee shall listein. If a Rent be granted to A. in Fee, with a Distress for Life, this is a Rent with Charge during his Life, and a Rent Seck after; but if the Distress be granted but for stars, it is not a Rent Charge at all, beaute the Freehold is always Seck. If a Rent be granted for Life out of a Term for L 2 L 3

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Years, and a Freehold, with a Clause of Distress in the Whole, the Whole shall issue out of the Freehold, and the Term is only charg'd with a Distress; but if it had been granted out of the Term alone, it should have issued out of the Term, and the Lands had been charg'd during the Term, if the Grantee had liv'd so long.

A Grant of 20 s. de qualibet Acra Terra, charges each Acre, fo that if there be 20

Acres it amounts to 20 %.

A. bargains and fells to B. and before Inrollment, both of them grant a Rent Charge to C. it is now A.'s Grant, and B.'s Confirmation, after Inrollment it is B.'s

Grant, and A.'s Confirmation.

If the Lord purchase the Fee of part of the Tenancy, or if a Lessee surrender or for seit part of his Land to the Lessor, the Rent by which the Ten't holds, shall be apportion'd according to the Value of the Land remaining in his Hands, and extinguished for the rest; and if Lessor grant over Part of the Rev'n, his Grantee shall have part of the Rent.

If Lessor disserts his Lessee of part of the Land, the Rent shall be suspended in the Whole; but if he come to part of the Land by Act of Law, the Rent shall be apportioned for part, and suspended for the rest it may likewise be suspended in part by the Act of a third Person, as if there be two Parceners of a Seigniory, and one dissert the Ten't, the Rent shall be suspended so there Moiety only; but it is said, that if the Ten't make a Gift in T. or a Lease to the Loss

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Lord of Part, the Seigniory shall be fuf-

pended for the Whole. Sed (a) Q.

If the Grantee of a Rent Charge in Fee 143, 144.

purchase Parcel of the Land in Fee, the whole Rent is extinct, because it is entire, and against common Right, and issuing out of every part of the Land, and wholly depends upon the Deed, which creates it without a Tenure, against the natural Course of the Law, and therefore must be strictly pursued; but if the Grantor grant that he may distrein for the same Rent in the Residue of the Land, this amounts to a new Grant. A. grants to B.

a Rent in Fee.

But the Grantee of a Rent, or Annuity of 20 s. yearly, may release 10 s. or more, or less, and distrein for the Residue, or he may grant over 10 s. Parcel thereof, and thereby the Annuity, or Rent is divided;

a Rent for L. and by the same Deed grants

that B. and his Heirs shall diffrein for the

ame Rent, this amounts to a new Grant of

but part of the Land cannot be discharg'd without discharging the Residue.

When one extinguishes a Rent Charge, (which he has by the express Words of the Grant,) by purchasing Part of the Land, which is his own Act, he cannot afterwards have a Writ of Annuity, which is given by Implication only: But where a Rent determines by the Act of God, as where Ten't per autre Vie grants a Rent for 21 Years, and cestingue Vie dies during the Years, or where it is deseated by the Eviction of the Land charg'd by an elder Title, the Grantee shall have a Writ of Annuity.

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Co. L.149. b. 150, a.

A Rent Charge may be fuspended in Part, or extinct in Part by Act of Law, as if Part of the Land charg'd descend to the Granter, or be recover'd by him as Heir to his Anceftor, who had alien'd the same within Age, or while he was Non Compos; or if the Rent descend to the Ten't of part of the Land. So if a Man grant a Rent Charge in Fee out of his Land to one of his Daughters, and die feis'd of the Land, and a Moiety thereof descend to the Grantee, the faid Moiety is discharg'd of the Rent both in her Hands, and in the Hands of her Feoffee, and the other Moiety in the Hands of her Sifter, is charg'd with a Moie-The Husband makes a ty of the Rent. Feoffment, and the Feoffee grants a Rent out of the Land to the Wife, the Husband dies, the Wife by Custom recovers a Moieby for her Dower, the shall have but a Moiety of the Rent, for tho' by Relation her Dower be above the Rent, yet such Fictions of Law are always equitable. But, in all these Cases where the Rent Charge is apportion'd, the Writ of Annuity fails, for that must be grounded on the Deed on which it was granted, and the Personalty is indivisible according to the Rule,

Annua nec debitum Judex non separat ipsum.

And for the same Reason, if the Fee of part of Land extended on an Execution descend to the Conusee, all the Execution is avoided, for the Duty being Personal can't be divided.

If Grantee of a Rent Charge grant the fame to the Ter-tenant, and a Stranger, it

hall be extinct for a Moiety.

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If a Man feis'd of two Acres, of the one 148. b. n T. and of the other in Fee, grant a Rent out of both, and die, and the Acre in T. defends to the Issue, the whole Rent Charge hall iffue out of the other Acre. So if one trant a Rent out of two Acres, and afterwards one of them be evicted either by a tranger, or the Grantee himself, by a Title Paramount, as for a Condition broken, &c. he Whole shall iffue out of the other Acre, or the Acre which is evicted is absolutely lischarg'd from the Rent, and the Grantor hall not, to avoid his own Grant in the Whole, or in Part, take Advantage of the Weakness of his own Estate.

But if a Min feis'd of one Acre in T. ind of another in Fee, make a Lease of oth referving Rent, and die, and the case of the Acre in T, be avoided by he Issue, the Rent shall be apportion'd: o where a Man makes a Leale of two Acres, referving Rent, on Condition that he Lessee shall have Fee in one of them m doing such an Act, if the Leffee perorm the Condition, the Rent shall be pportion'd, because it is incident to the lev'n, yet by Relation the Lessee has the

ee-Simple, ab initio.

If a Leffee L. grant a Rent to his Leffer ut of an Acre leafed to him by the Leffor, nd out of another Acre which he has in te, and after the Lessor enter for a Forseiare into the Acre leas'd by him, or recover

11

it in an Action of Waste, the Rent shall not be extinct, for tho' the Lessor claim part of the Land charg'd under the Lessee, yet since it is given him by Law for the wrongful Act of the Lessee, the Lessee shall not take Advantage of it to extinguish the whole Rent; nor shall it wholly issue out of the Land in Fee, because the Lessor claims the other Acre under the State of the Lessee, and subject to he Charges during the Term, and therefore it shall be apportioned.

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shall be apportion'd.

Entire Services shall be multiplied by:
Stranger's Purchase of part of the Land holden by them, but they shall be extinguished by the Lord's Purchase of part of the Land unless they be pro bono Publico, as forth Desence of the Realm, or Advancement of Justice, or consist in Works of Charity, of Piety, for such Services shall remain after the Lord has purchas'd Part of the Land Three Jointenants hold by a Horse, the Lor recovers in Cessavia against two of them, the whole Service is extinct.

Notwithstanding a Common fans Nonbre can't be apportion'd, because it is unce tain, yet if part of the Land charg'd then with descend to the Commoner, the Common still remains, but the Ter-ten't sha

not be prejudiced thereby.

If Lord by Kt. Service had purchas Part of the Land so holden, the Homa and Fealty remain'd, albeit they were tire, because they cost the Ten't nothing But the Escuage should have been apportion'd according to the Value of the Land

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If the Ten't had also holden by an Heriot, the Heriot should have been extinct, because it is entire and valuable, by which it appears that entire Services, which are valuable, shall be extinguish'd by the Lord's Purchase of part of the Land, whether they be annual or not. But if a Heriot be due to the Lord by Custom on the Death of every Ten't, it shall not be extinct by the Lord's Purchase of part, for the Ten't of part is still a Ten't.

A Rent Service may become a Rent Seck by the Grant of him that has it fevering the Fealty from it. Therefore, if there be Lord and Ten't by Fealty and Rent, and the Lord grant over the Rent in Fee, or T. faving the Fealty, the Rent passes as a Rent Seck, for the Land is still holden of the Lord because of the Fealty, which always makes a Tenure, and it cannot be immediately holden of two Lords at the same Time; and notwithstanding, in fuch Case the Lord grant further, that the Grantee shall distrein, yet the Rent shall pass as a Rent Seck, for the Lord had no Power to make fuch Grant. But if fuch a Lord releafe to the Ten't all his Right to the Land. laving the Rent, it continues a Rent Service. If one make a Gift in T. referving Rent, and then grant over the Services, the Fealty, as inseparably incident to the Rev'n, remains in him, but the Rent shall pass, and yet it shall be but a Rent Seck in the Hands of the Grantee. If two Co-parceners of a Seigniory make Partition, and the Fealty be allotted to the one, and the Rent to the

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the other, it becomes a Rent Seck. If there be Lord and Ten't by Fealty, and Suit of Court, and the Lord grant over the Fealty, the Suit of Court is gone, for it can't be due to the Grantor, because he ceases to be Lord, nor to the Grantee, because he can keep no Court. If a Rent Service, which is part of a Mannor, become a Rent Seck, by the Lord's Release of the Fealty to the Ten't, or by the Lord Paramount's Purchase of any of the Tenancies, it continues part of the Mannor; but the Nature of it is to far chang'd, that, in an Affife for it, all the Ter-ten'ts must be nam'd, as they must be in Affifes for other Rents Seck, or Rents Charge.

The Lord of whom Land was holden by Homage, Fealty, and Rent, could not by his Grant sever the Homage from the Fealty, while the Homage continued, but he might have releas'd the Homage faving the Fealty. If he had granted over the Rent, or fuffer'd a Recovery thereof by Consent, the Homage should not have pass'd withit; but a Recovery of the Rent by an elder Title had inclusively recover'd the Homage, because no Pracipe did lie for the Homage, but only for the Rent. Yet if there be Lord and Ten't by Fealty and Rent, and the Ten't grant over the Rent, the Fealty shall pass as incident to it, unless it be exprelly excepted.

Before 12 Car. 2. 24. Homage and Escuage did necessarily make a Tenure, as Fealty still does at this Day, and the Lord had an inseparable Right to distrein for them.

152.

If one make a Gift in T. or a Lease L. or 7. referving Rent, and grant the Rent, faving the Rev'n, it becomes Seck, yet at Law it could not pass without Attornment; but If the Rev'n be granted for Life, the Rent paffes as a Rent Service, for the Services pals by the Grant of the Rev'n, without faying cum Pertinentiis, but the Rev'n passes not by the Grant of the Services, for Accessorium fe-

quitur, non ducit suum Principale. If there be Lord Mesne and Ten't, and the Lord purchase the Tenancy, the Mesnalty is extinct, for the Lord fill holds of the Lord next above him, and if he should also hold of him that was Mesne, hould hold the fame Land immediately of several Lords, which is against the Rules of law. Nor is it against Reason that this should extinguish the Mesnalty, for it is no more to the Mesne's Prejudice, than the first Creation of the Mefnalty was to the Lord's. And if the Ten't make a Gift in T. Rem'r to K. he extinguishes all the Mesnalties, for the Fee-Simple in K. can be holden of no one, and the Fee-Simthe of the Mesnalties being extinct, there can't raparticular Estate thereof, for the particular Eface, and the Rem'r being as one Estate in law, the Rem'r can't be discharged of the Mesully, and the particular Estate remain charg'd. 9 Rep. 134-And it is faid that the Lord may likewise b. oringuish a Mesnalty, by confirming the Estate of the Ten't to hold of him in (a) (a) Contra frankalmoine, or by releasing to him all Co.L.305.D his Right. When the Mesnalty is extinct w the Manner aforesaid, he that was Mesne

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shall diffrein of common Right, for fo much as the Rent paid to him by the Tent exceeded that paid by him to the Lord, which remaining Rent is call'd a Rent Seck And the Conusee of a Staby Surplufage. tute that has Rent reserv'd on a Lease extended and deliver'd to him shall distrein for it, because he comes to it by Course of Law.

153.

If he that has a Rent Seck be once feis'd of any part thereof, and the Rent be afterwards behind, he ought to go by himself or fome other to the Land, either on the Day of Payment, or after, and demand the Rent at the House, or on any part of the Land, and if the Ten't deny it, this is a Dissin of the Rent, or if he be not ready to pay, or be absent, this is a Denial in Law, and a Dissin, for which an Affise lies; but the Grantee must make a Demand of the Rent, whether the Ten't be present or absent, for he can't be diffeis'd thereof unless he demand And if the Ten't be ready on the Land is pay it on the Day, and there be none on th Part of the Grantee to receive it, the Grantee (4) 29. Ho. 207. can't before the next Day of Payment make the

(a) 7 Rep.

Ten't a Diss'or but by a personal Demand the Rent from the Ten't himself upon the Land for no Man shall be liable to pay Damages, &c (b) Cro.Ca. without a wilful Fault. (b) If Rent be grante out of one House payable at another, it may demanded at cither.

.508.

If one make a Lease L. of Land in tw Counties referving Rent, fuch Rent is en tire, and the Leffor may in either Count diltren

diffrein and avow for the Whole: Or he may have an Affile in confinio Comitatus by 7 R. 2. 10. whether the Counties are adjoining or not, but the Justices shall have but one Patent, tho' the (a) Writs be feveral, and (a) F.N.B. one may have such an Assise for Rent issu- 180. A. ing out of more Counties than two; and by Common Law, if diverse Mannors, in diverse Counties, be holden by one Tenure, the Lord may have several Writs of Cufloms and Services in each County, and Count according to his Case, but if the Ten't do Ceffe, the Lord can't have several Writs of Ceffavit, for the faid Writ is given by (b) Statute, and the Form therein pre- (b) W.2.23. scrib'd must be strictly pursued.

If the Grantee of Rent recover in Affife of Novel Diss'in, and be after disseis'd again by the same Diss'or, he shall have a Writ of Re-diffeifin by 20 H. 3. 3. which Statute only mentions Re-diffeifin after Recoveries by Assise, or Confession, before Justices in Eire, and yet it is said to extend to recovenes on Demurrer, &c. as well before other Justices, as those, sed Q. for if this be so, to what Purpose was W. 2. 26. made, which provides for these Cases, and seems to Suppose that Vid. 2 Inst.

they were not within the Purview of 20 H. 3. The first Recovery must be in Assis of Novel Dis'in, but if it were by a Writ of

Right Close, or Assis of fresh Force, no Re-difs'in lies.

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Every Writ of Re-difs'in must be between the same Diss'ee and Diss'or that were Parties to the first Recovery, where idem is taken for non alius; therefore if a Diss'ee recover

cover in an Affile against two, and after be diffeis'd by one of them, he may have a Redisin against him, for here is no new Defen. dant not guilty of the former Dissin. So where Parceners or Jointenants are diffeis'd, and recover, and make Partition, and then are re-diffeis'd, they shall have several redissins, for here is no new Plaintiff, not wrong'd by the first Dissin. If a Feme Sole recover in Assife, and take Husband. and they are re-diffeis'd, they shall have a Re-difs'in, for the Husband only joins with the Wife for Conformity, fo that in Effect the Diss'ee is the same. If one guilty of a Re-diss'in make a Feoffment, the Diss'e shall have a Re-diss'in against him and the Feoffee, for the Right of bringing this Action vested in the Diss'ee, shall not be deseated by the Feoffment. But if a Diss'ee recover against one, and afterwards be re-diffeis'd by him and another, or if he recover against a Feme Sole, and then be re-diffeis'd by her, and another whom she afterwards marries, he can't have a Re-dits'in, for here another must be join'd in it, who was not guilty of the first Dissin. In an Assile against A. and B. A. is found Diss'or, and B. Ten't, the Plaintiff recovers, and afterwards is diffeis'd by B. he shall not have a Re-diss'in against him, because he differs'd him but once.

The Words of the Statute are, de endem Tenemento, &c. yet if one be re-diffeis'd of Parcel of that which was formerly recover'd; or if one recover a Rent Service, which after becomes a Rent Seck by Surplu-

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fage, and then be re-diffeis'd thereof; or if Ten't in T. recover in Affife, and then become Ten't in T. apres, Ge. and be re-diffeis'd; or if one recover Land to which Common is appurtenant, and then be rediffeis'd of the Common; in all these Cases he may have a Writ of Re-diss'in.

Affife is sometimes taken for a Jury, fometimes for the whole Writ of Affile, fometimes for an Ordinance to put Things

into a certain Rule.

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Albeit the Words of the Writ of Affife be, guod vicecomes faceret duodecem videre Tenenentum, &c. yet by ancient Course he must

Every Juror ought to be Liber & Legalis, of the Neighbourhood, sufficient in Underfunding and Estate, and indifferent as he

fands unsworn.

Either Party may have his Challenge ither to the Array of the whole Jury, or some Default in the Officer that reurn'd it, or to the Polls, i. e. to the parti-

tular furors.

A Challenge is either Principal, or to the avour; a principal Challenge is grounded in such a manifest Presumption of Partialiy, that, if it be found true, it unquestionbly sets aside the Array, or the Juror, but Co. L. 157. Challenge to the Favour leaves it to the ba Discretion of the Triers. There are many vincipal Causes of Challenge to the Array, sif the Officer return any Juror at the Par-ies Denomination, or that he may be more avourable to one Party than the other, or rice, Ithe Array be return'd by a Bailiff of a

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Franchife, and the Sheriff return it as of himself, in which Case the Party should lose his Challenges, for a Default in the Bailiff. because the Return on Record is in the Sheriff's Name; but if the Sheriff return one withina Liberty, this is good, and the Lord of the Franchise is put to his Action against him. It is also a good Cause of a principal Chal. lenge if no Knight be returned in an Attaint, or when a Lord of Parliament is Party, either fole, or join'd with others; but it is sufficient if a Knight be return'd, whe ther he appear or not. The K. may takes principal Challenge, or to the Favour, and it shall be tried according to the usual Course; and when he is a Party, or in Case of Life, the Subject may take a principal Challenge, but not to the Favour, I the Array be challenged on both Sides, or return'd by one that has no Liberty, or if a Bailiff return a Juror that is not within his Liberty, the Array shall be quash'd. If the Sheriff be liable to the Distress of

either of the Parties mediately, or immediately, or if he be his Servant, or Officer in Fee, or of Robes, or his (a) Counsellor, o Attorney, or have part of the Land depend ing on the same Title, or if he has been Chal Godfather to a Child of either of the Par alled ties, or either of them to his, or if either o em have an Action of Debt against him or if an Action of Battery or such-like which implies Displeasure, are depending between them. These are principal Chal turn lenges to the Array, and such Exception Plaint

against a Juror are principal Challenges o

(a) But by Finch of Law 402. Thefe are Challenges to the Favour only.

he Polls. But if either of the Parties be subject to the Distress of the Sheriff, &c. or if the Sheriff, &c. have an Action of Debt against either of the Parties, these are Causes of Challenge to the Favour only, for the Sheriff, &c. thereby is not under the Party's

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Consanguinity, how remote soever be-ween the Sheriff, or Juror, and either of the Parties, or Affinity by Marriage of either Party himself with the Cousin of the Sheriff, or the Juror, or è converso, are Caules of principal Challenge to the Array or to the Polls: But if the Marriage be between the Son of the one, and Daughter of the other, it is a Cause of Challenge to the Favour only. He that challenges the Array, is a Juror for Cousen but if it be found that he Party is Cousin, but if it be found that Co. L. 157. ne is Cousin, it is sufficient, whether it 3. be found in the Manner alledged or not.

Note, That a Bastard can have no Kindred.
Two Strangers made up a Pannel fairly,
and the Sheriff return'd it, the Array was

the challeng'd for this Cause, and the Challenge Fitz. Chall.

The challeng'd for this Cause, and the Challenge Fitz. Chall.

The challenge of the Desendant may have a principal Co.L. 157.

The challenge to the Array, the Plaintiff may b. 158. a.

The challenge it, and pray Process to the Coroners, and if he alledge a good Cause against any him of them also be the coroners. him of them also, he may pray Process to the like rest, if against all of them, the Court shall distribute appoint certain Elisors, against whose Rechaltum no Challenge can be had; but the tion Plaintist can't have such Process to the Cotoners, E.c. unless the Desendant will confess to the Cotoners, E.c. unless the Desendant will confess tels

1 Lev. 61.

Contra.

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fess such Cause alledged by the Plaintiff to be true, and if he will not confess it, the Process shall go to the Sheriff, and the Defendant shall not Challenge the Array for that Cause. But the Desendant can't alledge fuch Matter, and pray Process to the Coroners. For it shall not be intended that the Plaintiff to delay himself, will challenge the Array without some actual Partiality, and when the Array is quash'd, Process shall be Co. L. 158, awarded to the Coroners, Gc. ut supra, Note, When Process is once awarded to

the Coroners, &c. for the Sheriff's actual Partiality, the Entry is, Vice comes fe non intromittat, and in fuch Cafe, Process shall not afterwards be awarded to any new Sheriff, but where it was awarded to the Coroners, for that the Sheriff is Ten't, Oc. it may be awarded to a new Sheriff.

Challenges to the Polls are four-fold. 1. Peremptory. 2. Principal. 3. To the Favour. 4. For not being of the Hundsed.

1. A Peremptory Challenge, is when a Party challenges a Juror without shewing any Cause; at Law one indicted or appeald of Treason or Felony, or alledging Matter to avoid an Outlawry thereon, might, in Co. L. 157. favorem Vite, have challenged peremptorily

35. But now in Case of Petit-Treason, Murder, or Felony, he can Challenge but After one has taken his peremptory Challenges, he may challenge, for Caufe, as many more as he will; and if he have challenged one for Cause, and that be found

Co. L. 158. against him, he may after challenge him peremptorily. In

In Appeal against diverse, if the Venire be loint, a Juror challenged peremptorily against one, shall be drawn against all; but if the Venire's be several, he may be drawn guinft one, and remain as to the others.

K. at Law might challenge peremptority s many as he would, but at this Day by 3 Ed. I. he must shew Cause, but he is not 1 Vent.309, ound to shew it before the Pannel is gone 310.

brough, as a Subject must.

A Peer can't challenge any of his Peers. 2. Principal Challenges of the Poll age

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The First is in Respect of the Dignity of Juror, as if a Peer of the Realm be reum'd on a Jury, he may either be challen-

ed, or challenge himfelf.

The Second is in Respect of some Defect fthe Juror, either in his Birth, as if he be n Alien; or in his Condition, as if he be a Villein; or in his Age, as if he be a Mior; or in his Estate, as if he have no Freeold in the same County, out of ancient emelne, at the Time of his Appearance, ther in his own Right or another's. But 7 23 H. 8. 13. Inhabitants in corporate owns, worth 40 l. in Goods, may try Felonies Sessions, and Gaol-Deliveries for such Towns. ) And this is not repeal d by Subsequent Sta-(a) 1 Ven.

us concerning Furors. 4 & 5 Gu. & Ma. 366. requires that all Tryals in the Courts at estminster, or before Justices of Nisi prius, have ser and Terminer, or Gaol-Delivery, or Gene-lave Sessions of the Peace, must be by Jurors, bin ereof each is worth 101. per Annum, of

schold or Copyhold in the Same County, if the

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Tryal be in England, and by Jurors worth 61, per Annum, if in Wales; and Tales Mennus have 51. per Annum in England, 31. per Annum in Wales.

or Partiality of the Juror, as if he be of Kin to either Party, and if an Action be

Vid. supra, brought by a Corporation, and the June be of Kin to any Member thereof, it is a principal Challenge, and if a Juror bechallenged for being of Kin to one Party, it is no Counterplea, that he is of Kin also to

the other, for the Venire commands the Sheriff to return those that are of Kin to neither.

It is also a principal Cause of Chillenge that the Juror is a Witness nam'd in the Deed, or hath formerly given a Verdict of the same Cause, whether between the same Parties, or others: But this is only a Challenge to the Favour, if the Record be canother Court, and not shewn forth, but it be of the same Court, it is sufficient shew the Day and the Term.

It is also a principal Challenge that a pror hath indicted the Party for the same Cause, or hath eaten or drunk at he Charge, or taken Money to give his vedict, or that he is a Parishioner of the Parish whereof the other Party is Parson, the Right of the Church come in question or that he hath been an Arbitrator chol by the Party in the same Cause, and ha treated thereof: But an Arbitrator chol by both Parties, whether he have treated the Matter or not, or chosen by one Part

if he have never treated thereof, or a Commissioner chosen by one Party for Examination of Witnesses, and appointed under the Great Seal, can't be challenged principally. but for fuch Cause one may be challenged for Favour.

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The Party himfelf may labour a Juror to ppear, and discharge his Conscience, but Hob. 294.

Stranger doing the Same is an Embraceor.
The Fourth is in Respect of some Offence of the Juror, as if he be attainted or con-ricted of Treason or Felony, or any Offence o Life or Member, or in Attaint for a false Verdict, or of Perjury as a Witness, or Conspiracy at K.'s Suit, or in any Suit for K. or Subject, be adjudged to a corporal the Punishment, whereby he becomes infa-to nous; so if he be outlaw'd in a criminal or sivil Prosecution; and some say if he be that accommunicate.

3. Challenges to the Favour are Infinite; but is if the Juror be a Fellow Servant to the arty himself, or Cousin, &c. to him in lev'n, which is but to the Favour, because a le in Rev'n is not Party to the Record, but fan t would be a principal Challenge if he to be Party by Voucher, Aid, or Reserve Party by Land to the Party to the P

4. Challenges for the Hundred avoided fon, he Array, by Common Law, if 4, and by (a) (a) 35 H.8. ellio tatute, if 6, of the Hundred, where the 6. 2 Ed.6. choiced ause of Action arose, did not remain on 32. d has he Jury. But now by 4  $\circ$  5 Annæ 16, no choiced surfaced are required except in Prosecutions attended timinal, and on penal Statutes, because in there

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other Cases the Venire Shall be, de Corpore Comitatus.

(a) Dyer 231. pl. 3.

158. 2.

He that (a) takes fuch a Challenge, must shew in what Hundred the Visne lies, and (b) Co. L. he (b) must take it before so many are sworn as will ferve for the Hundred, and he that is challenged for the Hundred shall not be drawn absolutely, but shall remain prater Hundredum.

> No Hundredors are requir'd when the Jury comes de Corpore Comitatus, or de proxi mo Hundredo, for that the Lord of the Hun-

dred is Party.

If a Perion dwell in the Hundred, who ther he have any Freehold there or not, o if he had a Freehold there when he was re turn'd, and fell it before he appear, he is good Hundredor; but if he fell all his Free hold, he may be challeng'd absolutely.

In an Attaint the Jurors are troubled and yet the fame Number of Hundredon fuffices; if diverse Hundreds are in a Lee or if the Cause of Action arose in diver Hundreds, the Hundredors may come from any of them.

One shall not have such Challenge to the Polls as he might have had to the Am And after one has taken a Challenge tot Polls, he shall not after challenge the A ray.

When the Inquest is awarded by Defaul the Defendant lofes his Challenges, but the

Plaintiff does not.

Tho' a Man can't plead a double Ple yet he may have diverse Challenges, but

must take them all at once. After the Challenge of one Party is tried, and the Jufor found indifferent, the other Party may

challenge hun.

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If the Party challenge the Array, and it be found against him, and the same Party challenge the Polls, he must shew Cause presently, i. e. before the Clerk has gone through the Pannel, so must the Defendant in Appeals of Felony, and where K. is Party, and so must he that challenges a Juror after he is fworn, and fuch Cause must arise after he is iworn.

The (a) Array of the Tales shall not be (a) Bro. challenged by the fame Party, till that of Chall. 61. the Principal be tried; but if the Plaintiff challenge the Array of the Principal, the Defendant may that of the Tales; and in that Case one of each Pannel shall try them

both.

If the (b) Array of the principal Pannel (b)14H.7.2. be quash'd, the same Triers shall not try Bro. Chall. 61. the Principal Pannel, they shall try the Ar-

tay of the Tales.

The Challenge of the Array thall be tried by two of those impannelled, to be apcointed by the Court, not more than two without Consent; but when the Court has am'd two, they may for some special Cause, alledged by either Party, name thers. And if the Polls be challenged, fore any of the Jurars are Sworn, the Court but worn, they three shall try another, and if

Finch of Law, 412.

159.

two Triers shall cease, and the two Juros sworn shall try the rest. And a Challenge to the Polls taken after any Jurors are sworn. If the Plaintiff challenge ten, and the Desendant one, and the 12th be sworn, he shall be added to one of them challenged by the Plaintiff, and the other challenged by the Plaintiff, and the other challenged by the Desendant.

Such Challenges as do not found in Reproach of the Juror, shall be examined on

his Oath to inform the Triers.

When the Plaintiff recovers per visum furatorum, there ought to be 6 of the Juron who have had the View, or have known the Land.

Challenges have been allow'd in a Proprietate Probanda, and in a Writ to enquir

A. Lay-Man having an Interest in Tythe

of Waste.

Pensions, or other Ecclesiastical Duties, an being deforc'd thereof, by any Claiming the same, may have an Assiste, or other origins. Writs by 32 H. 8. 7. for they are made Lay Inheritances in the Hands of Lay-men, and shall be Assets, Men shall be Ten'ts by Cutesy, and Women endowed of them. The Assiste for 'em must be de Libero Tenement and a special Plaint made. But a Presistant be quod reddat omnes & omnimodas a

cimas Majores minutas & mixtas infra D. qu

quo modo crescen' contingen' ac annuatim rei

no Remedy for the Recovery thereof.

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And by the faid Statute, and 2 & 3 Ed. 6. 13. Lay-men, as well as Spiritual, shall fue for the not fetting out, withholding or refuling to pay Tythes and Offerings, and other Spiritual Duties, in the Spiritual Court, and no other; yet it is a common Practice to sue for them by English-Bill in Chancery or Exchequer, for it is said, that Courts of Equity had always a Jurisdiction in such Cases, and it seems that the Said Statutes Vid. Wats. only design'd to restrain the Common-Law Courts 485. from assuming a new Jurisdiction, and not to take from other Courts a Furisdiction legally vested in them before. And the 2 & 3 E. 6. 13. enacls, That whoever shall substract predial Tythes, shall pay the treble Value, to be recovered at Law, or the double Value to be recover'd in the Spiritual Court; and tho' it be not faid to whom it shall be paid, yet the Owner of the Tythes, whether he be ythe Lay or Spiritual, shall have it, for when a Statute gives a Forfeiture against him that ng the dispossesses a nother of his Duty or Interest, iging the Party wrong'd and not K. shall have it. Both Lay and Spiritual Persons may sue in in, an either Court. y Cu

If there be Lord and Ten't, and the Lord The trant the Rent, saving the Services, and the Ten't attorn; tho' this give a Seisin in Practically, as the Delivery of a Decd does when odas a lent is granted out of Land, yet if the D. of lent be denied the next Day of Payment, im rea he Grantee has no Remedy, (in Law or near the Equity.) Q. If this be not to be understood of Grant made without valuable Consideration. A But if the Ten't, when he attorns, give a

M 2

160.

Piece of Money, or a Ring, or an Ox, or any valuable Thing, in the Name of Seilin of the Rent, this gives fuch a Seisin as will maintain an Affile the next Day of Pay. ment, if the Rent be denied, tho it be no part of the Rent, nor shall be abated out of it. And a Man may have any other real Action for a Rent Seck after actual Seisin thereof once had, as well as for other Rents.

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There be feven Causes of Dis'in of Rent

Service.

The first is, Rescous of a Distress taken for the Rent behind.

The fecond is, Refisting the Lord in ta-

king a Distress.

Rescous is properly a setting at Liberty against Law a Distress taken, or Person arrested by Process or Course of Law. But if the Lord distrein for Rent when none is due, the Ten't may lawfully make Rescous or Resistance; and so may a Stranger, if his Beasts be distrein'd for Rent when none is behind. And if the Ten't tender the Ren to the Lord, when he comes to distrein and yet the Lord will diffrein, or if the Lord diffrein any Thing not diffreinable, a Beafts of the Plow when other sufficient Distress may be taken, the Ten't may mak Rescous, so may he if the Lord distrein it the (a) High-way, or out of his Fee. Bu of the Lord come to distrein, and have view ord of the Cattle, and the Ten't or any other to is Represent the Lord drive them out of his Fee his in and the Lord puriue, and distrein them with the Ten't can't rescue them; for in such that the Control of the can't rescue them; Cal

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Case in Judgment of Law they are taken within his Fee, and so shall the Writ of Rescous suppose. But if they go of themfelves out of the Fee, or be driven off for other Cause, whether before or after the Lord's View, or if the Ten't drive them off purposely before the View, the Lord can't difrein out of his Fee: But now by 8 Anna, If any Lessee shall fraudulently convey his Goods from the Premisses to prevent the Lesfor's Distress. the Leffor may within & Days feife them, &c. as a Difress wherever found. But if they be sold Bona Fide, before the Leffor's Seisure, he can't distrein them.

None can distrein for Damage Fesant. unless the Beasts be Damage Fesant at the Time; therefore if one come to distrein for Damage Fesant, and see the Beasts on his land, and the Owner of them drive them of purposely to avoid the Distress, and the Ten't distrein them, he may rescue them. f one not guilty be arrested by the Sheriff this own Authority for Felony, he may rescue himself; but if he had been taken by force of a Capias for Felony, he could ot.

The Third is fuing a Replevin without lause by Writ or Plaint, for tho it be regually true that a Man shall not be punish'd or fuing Writs in K.'s Courts, the Rule ils in this Case, because it disturbs the cher to is Rent; fo the turning of the Stream is a lis Fee liss in of the Mill, nam qui adimit Medium, then wimit Finem; fo to disturb a Man to enter in such disturbs a manure his Land is a Diss'in of the M 3

W.2. 25.

Land, qui enim obstruit Aditum, destruit Com-

The Fourth is Inclosure, for the Lord can't break open the Gates, or break down the Inclosures to distrein.

The Fifth is to counterplead the Plaintiff's Title whereby he is delay'd, but to

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plead Null Tort, Oc. is no Diss'in.

The Sixth is to vouch a Record, (whereby the taking of the Affise is deferr'd,) and fail of

it at the Day given to bring it in.

The Seventh is when the Ten't meets the Lord or Grantee, going to distrein for, or demand the Rent, and menaces them in such a Manner, that they dare not go to the Land to distrein for, or demand the Rent behind for fear of bodily Hurt.

And there are 8 Causes of Dissin of a Rent Charge, viz. all the Caufes aforefaid, and also Denial; but Denial is no Disin of a Rent Service, for he that has such Rent shall not be faid to be disseis'd, whilft the proper Remedy given him by Law lies open to him; but the Grantee's Power to distrein may be uncertain. because it depends wholly on the Validity of the Clause in the Deed, therefore if he waive it, he shall at least be in as good a Case as if there were no such Clause. There are two Jointe nants, and the Grantee of a Rent Charge distrains, one makes Rescous, both at Dissors, for the Distress was a Demand and the Non-payment a Denial and Difsin but the Rescuer alone is a Diss'or will Force.

And there are 3 Causes of Diss'in of Ren

Rent Seck, viz. Denial, Inclosure, and

forestalling the Way, Oc.

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By 32 H. 8. 37. Executors or Administrators of a Man feis'd of a Rent Service, Rent Charge or Seck, in Fee, or Tail, or for L. may diffrein, or have Debt for the Arrears incurr'd in the Life of the Testator, or Intefate. But at Law there was no Remedy for Executors, &c. of a Man seised of such Rent to recover fuch Arrears, as long as the Freehold of the Rent continued, but after an Estate L. in Rent determin'd, the Executors at Law might have had an Action of Debt.

By the faid Statute the Action of Debt lies only against him that took the Profits, when the Rent was behind, and his Executors or Administrators; but a Distress may be taken on the Land in the Hands of any claiming by or from him, i. e. under him, but not above him as Lord by Escheat.

But where the Testator or Intestate had no Remedy, the Executors or Administrators have none, as where the Lord grants

away his Seigniory before his Death.

The Lord's Executors can't diffrein him in Rem'r for the Arrears in the Life of Ten't L. for he claims not under him; but if a Rent Charge be granted to A. for the Life of B. and then the Land be lett to C. for Life, Rem'r to D. the Rent is behind, B. dies, sin and after C. dies, A. may diffrein D. for all with the Arrears, in respect of the different Penning of the Act in those two Cases, for the Statute expressly says, that Ten't pur autre Vie of Rent, his Executors, &c. Shall distrein M 4

for the Arrears, in Such Manner as he might have done if cestuyque Vie had been alive.

The faid Act extends to all Rent, whether it be referv'd in Money or Corn, &c, and whether it be payable every Year, or every 2 or 3 Years, &c. but it extends not to corporal Services, nor to a Nomine Pana, (but for this he and his Executors may have Debt.) nor to Relief, (but for this the Lord may distrein, and the Executors may have Debt.)

The Husband of one seis'd of Rent in Fee, &c. shall after the Wise's Death have the said double Remedy for the Arrears incurr'd before and after Marriage; but at Law he could only have Debt for those that

incurr'd during the Coverture.

### Of Parceners.

pArceners are where a Man seis'd in Fee or T. has Issue only Daughters, or dies without Issue and leaves Sisters, &c. and the Tenements descend to such Daughters or Sisters, &c. and they enter. They are called Parceners, because they are compellable by Writ de Partitione Faciendà, to make Partition; and all of 'em are but one Heir to their Ancestor, and yet they have Moieties, &c. in the Land descended.

If a Man have two Daughters, and one of 'em be attainted, the Moiety of his Lands shall descend to the other; but it is said, that if a Lease L. be made, Rem'r to the right Heirs of A. being dead, and leaving Issue two Daughters, whereof one is attainted, the Rem'r is wholly void; for

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none can purchase by the Name of Heir that is not compleatly Heir. Donor referves two Shillings Rent during his Life, and if he die, his Heir being within Age, then 20 s. to his Heirs; he dies leaving one Daughter within Age, and another of full Age, the Donee shall hold by Fealty only.

In a real Action brought against Parceners, if one of em be within Age, the shall have her Age, and for the Nonage of one

the Parol shall demur against both. Land is given in T. Male, on Condition, that if the Donee die without Heir Female, the Donor shall re-enter; this is a void Condition, because it is repugnant to the Estate.

The Freehold of Parceners, whilst undivided; is entire as to a Stranger's Pracipe, and so it remains after the Death of any of em, but between thermelves it is leveral as to many Purposes, for one may intens the other. The Isues of Daughters shall join in a Pracipe, when the common Ancestor, from whom they both must claim as Heirs, was last actually feis'd, but where the Daughters were feis'd and diffeis'd, their Iffues shall not join, because they severally Claim as Heirs to their Mothers, yet when they have recovered, they are Parceners as their Mothers were, and shall join in Affife. If differs'd; and one Pracipe lies against 'em, and one of them may release to the

By the Statute of Gloc. 6. If a Man die .. having many Heirs, whereof one is Son or Daughter, &c. and the others in a more re-M 5

mote

mote Degree, they shall join in a Mortdan.

cefter.

There is a Descent in Capita, and in Stir. pes, the First is to the Daughters themselves, the Second to their Issues, the Daughters take equally, the Issues as much as their respective Mothers would have taken.

A Rent Charge may be divided between Parceners, even before they have had actual Seisin of it, but Estovers appendant to a House, a Corody, Common of Pasture or (a) Vid. sup. Pischary uncertain, a Villein, Mill, or (4)

45.

Castle us'd for Desence of the Realm,  $\sigma_a$  can't be divided, but the Eldest shall have them, and make Allowance for the Value in some other Inheritance, but if the Ancestor lest no other Inheritance, then one shall have them one Year, and the other the

next, or fome fuch Way.

M. bargains and fells a Mannor to B. by Indenture with this Clause, provided always, and the said B. covenants and grants to and with the said M. his Heirs, and Assigns, that they may dig for Ore and Turs, for the making of Allom in the Wasts, being Parcel of the Mannor, by this M. has an Inheritance in this Power, and B. and his Heirs and Assigns may likewise dig. And M. may assign his Interest to one or more working with a Joint Stock, but he can't assign it in Part, or any Way divide it.

If an Earl leave only Daughters, his Poffessions shall be divided, and K. may give the Dignity to which of them he pleases, but if he leave but one Daughter, the Dig-

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nity descends to her, and her Posterity. If one hold by an Office of Honour, as of High Constable, the eldest Daughter shall before Marriage execute it by Deputy, after by her Husband.

Warranty annex'd to Parceners Lands remains after Partition, so does Warranty an-Vid. 31 H. nex'd to the Lands of Jointenants if they make 8.1.

Partition by Force of the Statute; but if Jointenants make Partition at Common Law, it is destroy'd. If one seis'd of a Mannor have by Prescription a Priviledge of keeping a Woodward in Woods, Parcel of the Mannor within a Forest, and of having the Bark of all Trees sell'd by the Forester within such Woods, and make a Feoffment of the Mannor to two, and they make Partition thereof, yet the said Priviledge remains.

Partitions between Parceners are either express, or implied: Of express Partitions, there are four by Consent, and one by Compulsion.

The 1st Partition by Consent, is when they agree to divide the Lands into equal Parts in Severalty, and that one shall have such a Part, and another such a Part, &c.

The 2d is when they agree that some Friends shall divide the Lands into equal Parts, and then the Eldest shall choose first one of the Parts so divided, &c. unless they otherwise agree. The Part chosen by the Eldest is called Enitia Pars; but this Priviledge is Personal to the Eldest, being given to her out of respect to her Age, and descends not to her Issue, for if she die, the next Eldest shall choose first.

166.

But

167.

(a) Co. L.

69.

But if they have an Advowson, the law gives the first Presentation to the Eldestif they can't agree, and this Priviledge goes to her Islue, Assignee, or Ten't by Curtefy.

The 3d Partition is when the Eldeft divides, and in fuch Case the shall not

choose.

The 4th is when after the Land is divided

they cast Lots for their Shares.

The express compulsary. Partition is by Writ de Partitione Facienda, the Words of which are ---- Cum eadem A. & B. in simal or pro indiviso Teneant tres Acras Terra, Oc. Vid. sup. 1. Note, That the Word Tenet in a Writ always implies a Ten't of the Freehold; there-

fore, if one of them be diffeis'd by the other, no Writ of Partition lies, and if one of them make a Lease L. the other shall

not have a Writ of Partition against her, (a) but against her Lessee she shall; and if one Vid. supra, make a Lease T. yet the other may have a

Writ of Partition against her.

There are also several implied Partitions in Law, as if there be three Parceners of a Mesnalty, and one of them purchase the Tenancy, this is a Partition in Law, and extinguishes the Mefnalty for a 3d Part, and the Lord must make several Avowsies. And if one Parcener insects a Stranger of the Part, the other Parcener and the Feosles are Ten'ts in Common. And if both of emmarry, and have Issue, and die, leaving thusbands Ten'ts by Curtesy, the Parcenary A divided, and several Pracipes he against the Ten'ts by Curtesy, &c. But if one reand the Lord must make several Avowries.

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cover against the other in Affise or nuper Obiit, yet they remain Parceners, for as the Plaint was for a Moiety, the Judgment and Execution must be pursuant thereunto.

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In a Writ of Partition, the first Judgment is, guod Partitio fiat inter partes Pradictas; and thereupon a Writ is awarded to the Sheriff, that he in proper Person shall go to the Tenements, and by the Oath of 12 Lawful Men of the Neighbourhood, in the Presence of the Parties, thall make Partition between hem, and allot one Part to the one Plantiff, han of the Youngest; and when the Partition so made is return'd under the Seals of the Sheriff and Jurors, Judgment shall be, and Partitio pradicta Firma & Stabilis in Perpetuum Teneatur; and this is the principal judgment, and no Writ of Error lies for the other before this is given.

Partition between Parceners might at Law be by Parol, and Rent; or Estovers, which Vid. sup. 6. it in Grant, might be reserv'd, or granted, without Deed, for Equality of Partition of a put of the Land descended, but not out of the other Land, and Rent so reserved, or grantand d, is distreinable of Common Right, tho' Part, the not Rent Service. But Q. If Parole wries. Partitions be not restrained by 29 Ca. 2. 3. If her of the Parcener grant a Rent to the other proceeding by Land in certain, yet it shall be intended wing the beout of her Purparty.

A Rent granted to Parceners for Equality sainst a Partition, or reserved by them on a Feofficer remains and by them of the Land which tover

they:

170.

they had in Parcenary, shall descend, oc. in Course of Parcenary, tho' it were grant-

ed or reserv'd in joint Words.

Jointenants or Ten'ts in Common could never make Partition by Parol, but by Deed they might; and Ten'ts in Common might have executed a Parol Partition by

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Livery.

A Partition made of Lands in Fee by Parceners of full Age binds them for ever, whether it be equal or unequal, so does an equal Partition of Lands in Tail, but if it be unequal, it concludes them only during their Lives to defeat it, but the Issue of her that has the leffer Part may after her Death disagree, and enter, and occupy in Common the Part allotted to her Aunt. Ten't in special Tail has issue a Daughter, his Wife dies, and he has iffue another Daugh ter by a second Wife, and dies; the Daugh ters make Partition, the Eldest is, in respect of the Privity of their Persons, concluded to impeach it during her Life; but a Parti tion between meer Strangers is void. A leaves two Daughters Bastard Eigne, c Mulier Puisne, they enter and make Parti

Co. L. 244. tion, the Mulier and her Heirs are conclu ded for ever.

An equal Partition made by the Parce ners, and their Husbands shall never avoided, tho' afterwards it happen to be come unequal, by overflowing of Wate

Co. L. 169. ill Husbandry, Gc. and a Rent granted bon S Husband and Wife for Owelty of fuch Patition, shall charge the Land for ever. But msel the Wife must be a Party to such Partitio loods -

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If it be unequal at the Time when it is made, it shall bind the Husbands while they live, but the Parcener which hath the leffer Part, may after her Husband's Death enter into her Sister's Part, and defeat the Partition, not only for fo much as will make her Share equal with her Sister's, but for the Whole; but if she enter into, and agree to the unequal Part, she is bound for ever.

A Partition made by Force of K.'s Writ, between Parceners of full Age, or Infants, or Femes Covert, whether equal or unequal, her hall never be avoided. A Partition equaleath ly made in Chancery between Parceners,
comwho were K.'s Wards, at the full Age of
fen't he Eldest, bound them for ever, (if part of
his he Capite Lands were allotted to each of
ugh hem;) but if it were unequal, it might be
sught woided by Scire Facias out of Chancery, or
espect by a Writ of Partitione Facienda, for no
sudden udgment was given on such Partition.

Partition made by one of Non Sane Me-Co. L. 166.

In nory binds herself, but not her Issue, unes, the six be equal. And an equal Partition
Partition hade by one under Age shall never be

Parti nade by one under Age shall never be onclu voided; if it be unequal, it may be avoidby her, either during her Nonage, or af-

Parce of her full Age, but if the take the whole wer to tofits of the unequal Part after her full to be ige, the is bound for ever.

Wate The full Age of Male or Female in comted to the full Age of Male or Female in comted to the Speech is understood of the Age of 21 ch Pa cars, for before that Age one can't bind in the full by any Deed, nor alien Land or artitle toods; but he may bind himself in a single Bill.

171.

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Bill, to pay for necessary Meat, Drink, Ap1 Lev. 86. parel, Physick, good Teaching, &c. but a
Bond with a Penalty for the Payment of
such Debt is not good. If he present not
to a void Church, it shall lapse after six
Months. If he be an Executor, he may release on Payment, not without; and generally what the Law binds him to do is good,
if done by him voluntarily without Suit of

One under Age can't be a Bailiff or Receiver, nor charged in Account as fuch. A Bailiff is a Servant who has the Administration of Lands for the Owner's Benefit, and he is chargeable in Account for the Profits he has raised, or reasonably might have done, his Expences deducted. An Account against a Receiver, is when one receives Money for another's Use to render an Account, but he shall not be allowed his Expences, for this Caufe a Bailiff shall not be charged as Receiver, for then he should lose his Expences. In an Account against a Batliff, the Plaintiff need not thew by whole Hands he receiv'd the Money, as in an Account against a Receiver the must, except he be a Merchant, and bring an Account against another Trading with him with Joint Stock to their common Profit, in which Case naming himself a Merchant, h may have an Account against the other na ming him a Merchant, and shall charge him as Receptor Denariorum ipfins B. ex qua cunque Caufa & Contractu ad communem Unis tatem ipforum A. & B. Provenientium, and the other shall Account for what he might

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ave receiv'd, and be allowed his Expences. One Jointenant making the other Bailiff of his Moiety shall have an Account against im. A Man can't be charged in an Acount but as Guardian in Socage, Bailiff, or Receiver.

Minor jurare non potest, therefore he can't ea luror, nor wage his Law, and if he make Default in a Pracipe quod reddat, in which Case one of full Age may wage his aw of Non Summons, he shall not be preudiced by it, because the Mean to excuse

he Default is taken away by Law.

Parceners of two Parcels of Land, one in he, the other in T. make Partition, by ne, that entail'd to the other; this shall ever be avoided by the Issue of her to from the Land in T. was allotted, nor by he Issue of the other, if it were equal, nd the Land in Fee descend, Rev'n thereof expectant on a State L. Tr. but if the that has the Fee alien in te, or T. and have Issue and die, the Issue may avoid the Partition, and enter on the and entail'd and hold in Purparty with or Aunt, for the Partition is no Discontimance, nor can the Tail be barr'd without all Recompence, and it was the Folly of the ther Parcener to take the Land T.only, for she hight have challeng'd a Moiety of the other. when a Woman that has Title of Dower ut of three Mannors, takes one for her large Dower, it is faid, the thall hold it charged with her Husband's Incumbrances, for the might

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might have had a 3d of all Three, and have

holden the same discharg'd. A. leaves two Daughters, and two Acres,

in one of which he has a good Title, in the other a bad one, one takes the one, the other the other, and after an Estate of Free. hold is evicted from the Parcener that had the Acre with the bad Title, either as to the Whole, or Part of her Purparty, she may enter and avoid the Partition as to the But if the alien her Part in Fee before the Land is recovered, the can't enter into the other Acre, for an Alienation in Fee dissolves the Privity, but a Lease L.o. T. or Gift in T. does not. And tho' in th Case above, the Rev'n expectant on a State in T made by the Parcener which had the Fee, be o so small Consideration in Law, that it shall no be esteem'd a Recompence sufficient to bar the En try of the Issue into the Lands in T. allotted t the other Parcener, yet in this Case a Revino a State T. inasmuch as it continues the Privit of the Coparcenary, shall give the Parcener is her Issue all the Priviledges incident thereto.

When a Parcener having made Partition or one that has made an Exchange, enter b Force of the Condition implied by Law of state every Partition and Exchange, for the Eviction of any Part of what was allotted to them, they thereby avoid the whole Partitioner them, they thereby avoid the whole Parti ther tion or Exchange. Yet if a Parcener be in the pleaded, and vouch the other by Force of the Warranty implied in Law, the shall recover but Pro Rata, for that will make he fall, so Part equal with her Sister's. But where a Man middle vouches another by Force of the Warrant idestination.

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mplied by Law on an Exchange, he shall reover a full Recompence for the Lands recoer'd against him, for it shall be intended that n the Exchange he gave to the other Lands to

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he full Value of them.

Notwithstanding a Parcener that makes a coffment of her Part, doth thereby wholly dismiss herself from having any part of the the dimits herielt from having any part of the land as Parcener; yet if her Feoffee be imthe bleaded and vouch her, the may have Aid fee of the other to deraign the Warranty Parameter mount, but not to recover pro Rata. And in fa Parcener infeoff her Son and Heir Apparent, and die, the Son may vouch the other larcener to deraign the Warranty Paramount, tho' he come to the Land by Feoffment, because the Warranty betwixt him and his Mother was extinct by Act of Law.

En A seis'd of Land in Fee has Issue two edges and makes a Gift in T. to one of aughters, and makes a Gift in T. to one of And hem, and dies seis'd of the Rev'n, and the hem, and dies seis'd of the Rev'n, and the home in hem, and dies seis'd of the Rev'n, and the home is impleaded, she shall not have Aid of her sister to recover pro Rata, or to deraign he Warranty Paramount, for her Sister is a tion stranger to her Estate Tail. But in this Case 2 H. 6. 16. Let be may vouch herself and her Sister, if her Co. L. 390. If the were made to her with Warranty.

Evil None but Parceners could at Law have 175. Let be Writ de Partitione Facienda, but the Parametric mer might have it against the Sister's Alice.

Partitioner might have it against her Sister's Aliee im tee, or Husband being Ten't by Curtesy,
the Converso. If there be three Sisters, and
like Eldest purchase the Part of the Youngthe she of, she shall have the said Writ against the
Man middle Sister; and if the Husband of the rant sidest purchase the Part of the Youngest,

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he and his Wife may have it against the middle Sister. By 31 H. 8. 1. 6 32 H. 8.32 all Jointenants and Ten'ts in Common may have the said Writ, and Ten't by Curtely by Equity of them, but a Parcener and her Sister's Feossee shall not join in such Writ, for one has a Remedy by Statute only, the other only at Law.

# Of Parceners by Custom.

PArceners by Custom, are the Sons of one seis'd in Fee or T. of Land of the Nature of Gavelkind, which shall equally inherit, in respect of the Custom of the Fee, not in respect of their Persons, for they are not one Heir, as Daughters are; and the Writ de Partitione Facienda lies between them; but the Declaration must mention the Custom, as to say, that the Land is of the Custom of Gavelkind; and Gavelkind and Burgh English differ in this Respect from all other Customs, that the Law takes Notice of them when generally alledged.

There is a Partition of a different Nature from any of those afore-mention'd: as if one seis'd of Land in Fee have Issue two Daughters, and give part thereof to one of them and her Husband in Frankmarriage, and die seis'd of the Remnant being of greater Value than that given in Frankmarriage, in this Case the Remnant shall descend to the other Sister only, and she shall occupy it to her own Use, unless the Donces will put the Land given in Frankmarriage in Hotchpot, i. e. together with the

he said Remnant, and if they offer to do it, and the Parcener refuse to put the Land in Fee in Hotchpot with the Land given in Frankmarriage, the Donees can have no Writ of Partition, because they do not hold assumed, but they may enter into the Land n Fee, and hold in Parcenary with her: when the Lands are put in Hotchpot, and he Value of each Acre known, Partition hall be made in this Manner, viz. the Donees hall retain the Land given in Frankmarrige, and shall have so much of that in Fee escended, as will, together with the Land given in Frankmarriage, make their Share and to that of the other Parcener. qual to that of the other Parcener. And fier fuch Partition, the Land given in rankmarriage shall be as the other Land lescended, and if the Donees be impleaded hereof, they shall have Aid of the other Parcener: In like manner, a Parcener that as Rent granted to her for Owelty of Parition, shall have the same in Course of Descent.

The Writ de Rationabili parte Bonorum, lies Co. L. 176. not without a Custom: The Children rea- b. one onably advanced by the Father in his Life two with any part of his Goods, shall have no e of wither Part thereof. In London, a Child adage, sanced by the Father with any Part of his goods, shall have no Part of those that he saves at his Death, unless the Father dephall have by Will, or under his Hand, that it she was but in Part of Advancement, and then the uch Part shall be put in Hotchpot with he rest.

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If the Donees or Parceners die beson they have have made Partition, &c. their Issues shall have the same Benefit of putting

in Hotchpot, Oc.

The Cause why Land so given shall be put in Hotchpot is, for that such Gist be the Word Frankmarriage implies an Advancement of the Donee, and if she will not put the Land in Hotchpot, it shall be intended that she was sufficiently advance But if the Father give Lands to his Daughter in Fee or T. &c. such Lands shall never be put in Hotchpot, neither shall Land which descend from any other Ancestorthat the Donor in Frankmarriage be put in Hotchpot.

179.

If the Land given in Frankmarriage bed equal Value with that descended, the shall be no such Putting in Hotchpot, so the Donees have an equal Share alread And it seems, that the Donees shall haveth Rev'n of the Land given in Frankmarriag for otherwise their Share would not equal. But if the Lands given in Frankmarriage were of equal Value with the so of the Donor's Land at the Time of the Gift, and afterwards impair'd without an Desault in the Donees, or if the Donor a ter purchase more Land in Fee, and desi'd thereof, the Land given in Frankmarriage shall be put in Hotchpot, &c.

If Donor in Frankmarriage die seis'd Lands in Tail, the same shall not be put i Hotchpot, but only those whereof he di

feis'd in Fee.

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If there be three Parceners, and the Youngest will have a Partition, and the ther two will not, they may allot to her a d Part to hold in Severalty, and hold the Remnant in Parcenary; and after either of hem two may have the Writ de Partitione facienda against the other. But when Parition is made by Force of the Writ, the shole Land must be divided.

# Of Jointenants.

Ointenants are where a Feoffment is made to two or more and their Heirs, or a rase is made to them for Term of their ives, and they enter. And if a Rent be ranted to A. & B. habendum to A. till he e married, and to B. till promoted, &c.

n this Case they are Jointenants, tho' the
imitations be several, and the Rent shall veth urvive by the Death of either of them, if riag is Moiety were not determin'd before his beath by Marriage, &c.

An Alien and a Subject may purchase

and a Subject may putchase and a Subject may putchase and and sport of the analysis of the another of Land, or a state of their own Use, they are Jointe-and dants; if to the Use of one of them, he to those Use, &c. is sole Ten't, and the thets Coadjutors; if it be to the Use of its and knows not of its s'd che that is absent, and knows not of it, but i hey are Jointenants before he agrees, but he di her he agrees, they cease to be Ten'ts, and te only Coadjutors, and the other by greeing to fuch Diss'in to his Use becomes

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comes Ten't, and is as much a Difs'or as he had commanded it, for omnis Ratihabin Retrotrabitur, & Mandato Aguiporatur : Bu an Affife lies as well against the Coadjutor as the Diss'or, who is the Ten't, and if the Ten't die, it lies against the Coadjutor and the Ten't of the Land, tho' he be n Diss'or. If the Demandant in a Praci disseise the Ten't to another's Use, he sha not abate the Writ thereby, because the'l be a Diss'or, he gains no Estate in the Lan Lessee L. is disseis'd to the Use of the Lesse and the Lessor afterwards agrees, yet he is Diss'or in Fee, for by the Diss'in the F was devested, and the aforefaid Rule, th a subsequent Agreement shall be equivale to a Command precedent, shall not have fuch a Retrospect, for the Benefit of hi that agrees to fuch wrongful Estate, to revest his Rev'n, which was develted b fore.

Diss'in of Land, &c. is when one ente ₹81. that has no Right of Entry, and oults t Ten't; but an Entry alone is not a Dis without a Claimer, or taking of the Pr

If one Jointenant die, his whole Interes shall furvive to the others. But the Esta of a Parcener, or Ten't in Common, that descend to their Issue, &c. Land is lett A. and B. for A.'s Life, B.'s Interest that furvive, but A.'s cannot. A naked Tru or Authority can't furvive, but a Tru Vid. supra, coupled with an Interest shall survive tog l'als ther with it. If a Letter of Attorney made to 4 or 3, to deliver Seifin jointly

feverally, two of them can't do it, for it is neither jointly by them all, nor feverally by any of them. But where the Sheriff makes a Warrant to 4 or 3 on a Capias jointly or feverally to arrest one, two of them may arrest the Party, for the greater Expedition of Justice; and for the same Reason, if a Venire Facias be awarded to 4 Coroners to return a Jury, and one of them die, the rest may execute it.

Joint Interests in Chattels, Goods, Debts, Covenants and Contracts, shall go to the Survivor; but if two Merchants trade with loint-Stock, and one of them die, his

Share shall go to his Executors.

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If Land be given to two Men, or to two Women, or to two Men and one Woman, or to a (a) Man and his Mother, and the (a) Vid. Co. Heirs of their Bodies begotten, in all these L. 184. a. Cases the Donees have a Joint Estate for life, and several Inheritances, inasmuch as hey can't have one Heir begotten between hem, and the Survivorship of the Inheritance ant hold Place where Land is given to two Men, and the Heirs of their Bodies, without delating the Will of the Donor as to the Issue of in that first dies, for whose Benefit the Gift was sade as well as the Donees: But where Land is wen to two Men and their Heirs, the Surviw shall have the Whole, because in such Case Limitation to the Heirs is wholly for the offee's Benefit, and means only that the absote Property shall be transferr'd to him. As e Inheritances in the Case above are seve-, so the Rev'n depending thereon is sevelalfo, and if any of the Donces die without

182

out Iffue, the Donor shall, after the Death of all the Donees, enter into a Moiety, or a 3d Part, &c. If the Donor grant over his Rev'n to two, the Grantees are Jointenants of the Rev'n of each Estate T. And if a Lease be for L. Rem'r in T. Rem'r in Fee to two, they are Jointenants for L. Ten'ts in Common of the Estate T. Jointenants of the Fee.

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If a Lease be made to two, and to the Heirs of one of them, they are Jointenants for L. and one has a Freehold, the other a Fee; and if he that has the Fee die, and then the other, and a Stranger enter, the Heir of him that had the Fee may either have Mortdancester, or a Writ of Right, in both of which he supposes the Fee to have been executed, of he may bring a Writ of Intrusion and term it a Rem'r, or if the Conveyance were by Fine, he may bring a Scire Facias, which proves the Fee not to be executed, fo that it is in his Choice to take it either Way. The Cause why the Inheritances in the Cases aforesaid drown not the States for L. is for that they are all made by one Conveyance, and by the express Pur port of the Deed a Joint Estate is given to the Parties for their Lives; but the Inheritance is divided from the Estate L. only in suppo fition of Law to this Purpose, for the Part can't convey it away after his Decease, and retain his foint Estate for L. and where the Inheritance and the particular Estate are di vided in feveral Conveyances, the on

Co. L. 182. drowns the other, therefore if lessor I be grant the Rev'n to his two Joint Lesse an h

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and the Heirs of their two Bodies, they become Ten'ts in T. in Possession: And if such Lessor grant his Rev'n in Fee to one of his Leffres, or if one make a Leafe L. and grant the Rev'n in Fee to his Lessee and a Stranger, or if Leffee L. grant his Estate to his Lesfor, and a Stranger, or to one of his Lesfor's Joint Grantees of the Rev'n in Fee; in all these Cases the Fee is executed for a Moiety in him in whom the Fee and Estate L meet together, and as to the other Moiey there is an Estate L. in the one, and the Rev'n of the Fee in the other, and no Joint Estate remains.

The Habend' may fever the Premisses, as Co. L. 183. then Land is lett to two, habend' to one b.

or L. Rem'r to the other for L.

If one Jointenant grant a Rent, or Com- Co. L. 184. tion, or Corody, or tuch-like, out of his b. art, or a Way over his Land, and die, the arvivor shall hold the Land discharg'd: nd if he fuffer Judgment in an Action of lebt, or acknowledge a Recognizance, and ie before Execution, there can be no Exeution after his Death, for the Rule is, Jus crescendi præfertur oneribus.

So if the Husband grant a Rent out of a um for ?. which he has in his Wife's ight, and die, she shall avoid it; and the nd entring on Land purchas'd by his Vil-n, shall avoid a Recognizance acknowged by him, and not executed, but he all not avoid a Lease T. made by him. a on

But if a Jointenant make a Lease T. in Co. L. 186. for I esenti or Future, of the Land, or the Her-lesse, and die, it can't be avoided by the

Survivor.

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Survivor, because the Lessee has an Interest in the Land it felf vested in him, and a Right to enjoy the Possession thereof by Force of the Lease. But if a Jointenant make a Lease to commence on a Condition precedent, and die before it be perform'd, the Survivor is not bound by it; and it is faid, that if a Jointenant be indebted to K. and die, the Land cannot be extended in Q. Dy. 224. the Hands of the Survivor. If a Jointenant Pl.C.261.a. take a Lease of his Moiety, the Survivor shall not be estopp'd by it, but he shall be bound by a Recovery had against the other. because the Right is bound by it. The Reafon of all these Cases is, because the Survivor claims not from his Companion, but from the Feoffor, and may plead the Feoffment to himself without mentioning the other; and if a Jointenant make a Lease? of his Moiety, referving a Rent, and die it shall go to his Executors, not to the Sur vivor, because he claims above it.

If a Jointenant grant a Rent, and the release to his Companion, the Grant re mains good, because the Releasee claims no by Survivor, and yet in Judgment of Lav he is in from the first Feoffor to most Pur drown'd; so if Lessee grant a Rent Charg poses, and the Estate of him that releas'd drown'd; so if Lessee grant a Rent Charg assess and surrender to his Lessor, yet his Grandent remains good; but there is no Question there where there are three Jointenants, and or all professes to one of his Companions only K. John that the Charge remains good, because one

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the Releasee claims not from the Feoffor,

but only from the Releasor.

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A Devise of Land whereof the Devisor is jointly feis'd, or possess'd, is void, for the Title of the Survivor is Paramount that of the Devisee, tho' they meet in an Instant. In like manner a Devise of a Heirloome,

In like manner a Devise of a Heirloome, in Heriot, or Mortuary, is void.

Two Femes are joint Lesses Tone of them akes Husband and dies, the Survivor, not the Husband, shall have the Whole, for the her, Survivor has the elder Title.

Jointenants are seised per My & per Tout, arvive each of them is seised by every Parcel, but had in every Parcel, and in the Whole eost ointly with his Companion; but each of the m has a Right but to a Moiety, & c. as to see Theost, demise, give, forseit, or lose by Dedie ault. If two Jointenants join in a Feost-Survent, a Re-entry by Force of a Condition and be reserved to one of the into no more than a Moiety, because in Judgment of Law an be reserved to one of 'em into no more than a Moiety, because in Judgment of Law it a Moiety pass'd from him: And in such as no ase, if one of 'em die, the Feossee can't lead a Feossement of the Whole from the wivivor: But each of 'em may warrant the whole, for a Man may warrant more than assess from him. If one of them make an odenture or Bargain and Sale, and the mestion her die before Involument, a Moiety only donall pass. If a Villein or an Alien puralish as Lands jointly with another, the Lord only it. Shall enter but into a Moiety.

One Jointenant may make the other Bait of Lessee 7. or W. of his Moiety.

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If two Jointenants be of an Advowson. and one prefent a Clerk who is Instituted and die, this shall serve for a Title in a Quare Impedit by the other. If one lointenant or Ten't in Common present alone, or if they both feverally prefent, the Ordinary may admit or refule the Presentee of either of 'em, and if they don't agree within the 6 Months, the Church will lapfe. Tho'th eldelt Parcener may present alone if the don't agree, yet if there be four Co-pure ners, and the Eldest and Youngest present,th Ordinary may refuse their Clerk, becaul the Eldest waives her Priviledge by joining with the Youngest.

Jointenants of a State of Freehold coul never make Partition by Parol, either befor or fince 29 Ca. 2. 3. but it is faid that Join tenants for Years might; and a voluntar Fartition by Deed made between them to mains as it was at Common Law, therefor tho' a compulfary Partition by Force 31 H. 8. 1. Oc. faves the Warranty by t express Words of the Statute, yet fuch volut

tary Partition destroys it.

If an Estate be made to Husband an Wife, and a 3d Person and their Heirs, takes one Moiety, and Husband and Wi another, for they are but one Person Law; therefore there are no Moieties Law of a Joint Estate made to them bo during the Coverture. For this Caufe, the Husband be attainted and executed, t Wife shall by her Petition regain all su Lands conveyed jointly to her and her Hu Defor band; so if the Lord enter on the Husban loint ben

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being his Villein, and having made fuch Purchase, the Wife surviving shall recover the Whole. It is faid, that if a Deed of Feoffment, or grant of a Rev'n, be made to 'em, whilst they are sole, and then they intermarry before Livery, or Attornment, that they take no Moieties; but if they had ben seited of an Use by Moieties before 27 H. 8. 10. and such Use had been executed by the Statute, they should have had the Estate of the Land by Moieties, for they thould have the Estate in such Plight as they had the Use. If they vouch and recover by Force of a Warranty made to 'em when fole, yet they shalf have no Moieties in the Estate recovered. A Lease is made to B. and to Husbind and Wife, viz. to B. for L. Husband in T. Wife for Years, in this Cale each of the Three has a feveral Effate.

Right of Entry or Action in one cannot fand in Jointure with a Freehold or Inheritance in Possession in another, but Right of Entry may stand in Jointure with a Right of Action, for the Parties may join in a Writ of Right; A Rent suspended by Unity of Possession, can't stand in Jointure with a tent in Possession, nor a Freehold with a leafe T. nor a Freehold and Inheritance in Possession with a Rev'n expectant on a Freehold, nor a Seisin in a natural Capacity

with a Seisin in a Politick Capacity.

Two Jointenants, the one for L. ther in Fee lose by Default, one shall have l fu Writ of Right, and the other a quad est r Hu Deforceat, yet after Recovery they are ushan jointenants again.

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Joint Estates must vest at once, therefore if a Lease L. be made, Rem'r to the Heirs of 7. S. and 7. N. then living, the Heirs can't be Jointenants; but if A. make a Feoffment to the Use of himself and such Wife as he shall marry, and afterwards take a Wife, he and his Wife are Jointenants, tho' he were feis'd of a qualify'd Fee before the Marriage, and the Wife had nothing, for by the Marriage the contingent Estate vested in them both at the same Time by the said Limitation. So if a Diffeisin be to the Use of two, tho' they se verally agree, they are Jointenants, for an Agreement subsequent is equivalent to a Command precedent.

Where Jointenants or Parceners pursue one Remedy, and one is fummon'd and fever'd, and the other recovers, he that was fummon'd and fever'd shall enter with him, but where the Remedies are feveral, the one shall not enter with the other till both have

recover'd.

#### Of Ten'ts in Common.

TEn'ts in Common are those that come to the Land by feveral Titles, or by one Title and feveral Rights, and they have the Possessin Common, but several Estates. As 4th l if there be three Jointenants, and one alies ever his Part, the other two are Jointenants on C their Parts that remain, and hold them in last d Common with the Alience. And if Jointe at sha nants make several Feossments, or Gists in as it T. or Leases L. the Feosses, Donees, or Less in trees are Ten'ts in Common fees, are Ten'ts in Common.

If Land be given to two Bishops, or Abbots, or Parsons, and their Successors, they are Ten'ts in Common at first, and have no. joint Estate for L. for they take in their Politick Capacities in Right of their Churches, or Houses; so if Land be given to the King, and a Subject and their Heirs, or if the Crown descend to a Jointenant, or if Lands be given to a Lay-man and a Parson, and to the Heirs of one, and Successors of the other, they are Ten'ts in Common, for the Fee vests in them in several Capacities. So if Land be given to F. Bishop of N. and his Successors, and to J.O. Dr. of Divinity and his Heirs, he, being the same Person, is Ten't in Common with himself. But if a Lease The granted to a Layman and Bishop. they are not Ten'ts in Common but Jointenants, for they both take it in their natural Capacitics.

A Corody granted to two and their Heirs is several, for the Corody is uncertain and

Personal.

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If Land be given to two, Habend' the one Moiety to one and his Heirs, and the other mete Moiety to the other and his Heirs, they are Jen'ts in Common; so if a Man seis'd in Fee, inscoff another of a Moiety, or 3d or es. As 4th Part without any Assignment of it in alies everalty, the Feosfee and Feosffor are Ten'ts ts on Common. If a Verdict find that one min has duas Partes Manerii in tres Partes Divis', pointed thall not be intended to be in Common, stain as it would have been if the Words were at Les in tres Partes Dividend'. As seised of a Mannon.

nor to which an Advowson is appendant. makes a Feoffment of three Acres, Parcel of it to two, habend' the one Moiety with the Moiety of the Advowson to one, and the other Moiety with a Moiety of the Advowson to the other, this disannexes the Advowson from the Mannor, and annexes it to the three Acres. At Law, fuch Feoffment of an uncertain Part with Livery was good without Deed, but an Advowson could never be disannex'd from a Mannor, and annex'd to part of it without Deed.

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If there be two joint Leffees L. and one 191. grant all that belongs to him to another, the Grantee and the other Lessee are Ten'ts in Common as long as both Leffees are alive, and the Leffor shall enter into a Moiety by the Death of either of them, because by such Grant the Jointure was severed: And it makes no Difference in this Case, if the joint Lease were made by these Words, ha bend to them two for their Lives, and to the Survivor, for expressio corum que tacit

insunt nihil operatur.

Reasons.

If there be two Parceners in Fee, and on of them make a Leafe L. this fevers not the Parcenary nor the Lord's Avowry; yet i one lointenant make fuch Leafe, he thereby fevers the Lord's Avowry, [fed Q. for the Rev'n in the Lessor, and the Freehold and In beritance of the other, are holden of the Lord a they were before:] And a Jointenant, by ma king such Lease, severs the Jointure for

Perk. 653.

1. The Freehold is thereby fever'd from the Jointure, and consequently the Rev'n depending on the Freehold is fever'd alfo,

And if there be two Jointenants for ?. and one of them lease his Part for Y. the jointure is fever'd, for the Leafe ?. in Poflession in the one, can't stand in Jointure with the Rev'n in the other Expectant on a Lease T.

2. If fuch Lessee of one Jointenant be impleaded and make Default, his Lefter

shall alone be receiv'd.

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3. If a Rent were reserv'd on such Lease the Lessor alone shall have it, but if two Jointenants join in a Leafe Li referving a Rent to one of them, both shall have it in respect of their joint Rev'n, unless the Reletvation be by Indenture; and if they reserve the Rev'n by Deed Poll or Indenture to one of them only, both shall have it, because the Reservation of the Rev'n is void, for they had the Rev'n before.

If the Leffee of two Jointenants furrender to one of them, it shall enure to them both, for such Conveyance is void, if made to any but tim in Rev'n or Rem'r, and wholly operates by drowning the particular Estate in the Revin. Or. But if fuch Leffee grant his Estate to one of them, the other shall have no Advantage thereof. If two Jointenants make Leale L. Rem'r to one of them in Fee, this ha good Grant of the Rem'r from one to the other.

After the Jointure has been fever'd by the tale of one Jointenant, if the Letter die in . The the Life of both Jointenants, they become ointenants. 193-

#### Of Ten'ts in Common.

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Tointenants again; but if either of them die before the Leslee, and his Part descend to his Issue, &c. the Jointure is gone for ever.

If one Jointenant make a Lease for his own L. and die, there shall be no Survivor. tho' the Lease that sever'd the Jointure be determin'd by his Death. 1. Because at the Time of his Death the Jointure was fever'd.

Vid. Co. L. 2. Because, Regularly there must be equal 181. b. Benefit on both Sides, but in this Cafe it is clear, That if the other Jointenant had died, there could have been no Survivor.

Companions only enures by Way of Mitter le Estate, and if a Joint Estate be made Vid. Supra, to Husband and Wife, and a 3d Person, and he release to the Husband only, the -Husband alone hath his Moiety, and if he release to the Wife, the hath the whole Moiety of the 3d Person, and the Husband hath nothing therein but in her Right. But a Release by a Jointenant to all his Compamions enures not by Way of Mitter I Estate, as to most Purposes, for they to whom the Release is made are suppos'd to be in from the first Feoffor, and shall de

A Release by a Jointenant to one of his

or Some Releases enure by Way of Muter -Droit, as a Release by a Diss'ee to one of hi 194. Dissors, which by the Delivery of the Deed velts the whole Inheritance in the Re Leafee, and develts the Estate of the other because he came to it merely by Wrong But if there be two Unirpers, a Release b the rightful Patron to one of them enur

Cott) contenants, they become

raign the warranty Paramount.

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to both, for they come not in merely by Wrong, but by the Admission and Institution of the Bishop, which are judicial Acts.

And some Releases enure by Way of Extinguishment, as if a Diss'or make a Feossment to two, or a Lease L. Rem'r in Fee, and the Diss'ee release to one of the Feos-

fees, or to the Leffee L.

A Rent may be reserved on Releases that mure by Way of Mitter le Estate, but not on those that enure by Mitter le Droit, or Extinguishment.

Ten'ts in Common may be fuch by Title

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In all Actions real or mix'd, Ten'ts in Common shall sever, because their Titles and Estates are several, but Jointenants shall join, because their Titles and Estates are joint. A. B. and C. are Jointenants, A. aliens to B. and then B. and C. are disses d, they shall join in an Assis for the two Parts, and B. alone shall have one for the Third. If Parceners being in by diverse Descents be disses d, they shall join in an Assis, for they are Parceners as their Mothers were, and as one Heir to their common Ancestor.

If two Ten'ts in Common join in a Gift T. or Lease L. reserving 20 s. or a Pound of Pepper, or any other severable Rent, and be disseis'd, they shall not join in an Assise, but each of them shall have one for a Moiety of the Rent, for as the Rev'n is several, the Rent incident thereto is several also. But the Plaint must be, de Medietate Viginti

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Solidorum, &c. not de Dimidio, or 101. 64 But if a Thing entire, as a Horse, oc. be referv'd, they must of necessity join in an Action for it, for one can't make a Plaint of the Moiety of a Horse. They shall also join in a Quare Impedit, and Writ of Right of Ward, and Ravishment of Ward, and if one of them release to the Defendant, the other shall take Benefit thereof and recover the Whole, for such Actions are partly Real and therefore the Release of one Shall not bar the other. They shall also join in detinue of Charters, and if one be nonfuit, the other shall recover. It is said, that they shall join in Warrantia Carta, and sever in Voucher.

If two Ten'ts in Common grant a Rent of 20 s. out of their Land, the Grantee shall have two Rents of 20 s. for their Grants shall be taken most strongly against themselves, and shall enure severally in respect of their several Interests; but if they reserve 20 s. on a Gist or Lease made by them both, they shall

have but one Rent of 20 s.

Ten'ts in Common shall join in Actions Personal, as Trespass, Account against their Bailiss, Oc. and such Actions shall survive; and if they bring a Quare Impedit, and su Months pass, and one die, the Writ shall not abate, tho' it be partly real, because, it should, this Wrong would be Remediless.

If three Parceners recover Land and Damages in Mortdancester, and one of them die, her Issue shall have Execution not only of the Land, but also of the Damages, as

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accessory to the Land, and yet the Words of the Judgment are joint, viz to recover Land and Damages; but if the three Sifters had fued Execution of the Damages by Elegit, and one of them had died, the Land taken in Execution would have furviv'd to the other, as a joint Chattel vested in them. If (a) the Aunt and Niece join for Waste (a) Vid. done in the Sifter's Life, the Aunt alone iupra, 93. hall recover Damages, because they are given in Respect of the Privity which is Personal. If Ten'ts in Common make a Lease Y, reserving Rent, they shall join in an Action of Debt for it, for that is grounded on the Conrall which is Personal, but sever in Avowry, for the Distress is made in respect of the Rev'n which is in Common.

There may be Ten'ts in Common of Chattels real or personal, entire or several, as Leafes T: Wards, Horses, &c. as when any of those who were jointenants of them gant over their Interest to a Stranger, the Grantee and the other are Ten'ts in Com-

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When a Waife, Oc. or Estray, falls to them who have a Mannor in Common, or land escheats to them, they are Ten'ts in

Common thereof.

Ten'ts in Common of a Term can't join in Ejectione Firma, or quare ejecit infra Terminum, because these Actions concern the Right which is feveral. If two be posses'd in Common of a Term for Years of Land, or em of any other severable real Chattel, and one test the other by driving off his Cattel, or as not suffering him to occupy, the other shall have

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have Ejectment, and recover Damages against him for the first Entry, but not for the mean Profits. But if one of them only take the whole Profits, he does not eject the other thereby, nor can the other have Trefpass against him, for each of them may occupy the Whole, per My & per Tout. And if two be possess'd in Common of a Chattell Personal, or an entire real Chattel, and one take it out of the other's Possession, he has no Remedy but to take it again when he fees his Time.

If there be two Ten'ts in Common of a Park or Dove-House, and one of them destroy all the Deer, or take all the old Doves and destroy the Flight; or if two have Land and Meet-stones in Common, and one of them carry them away; or if they have a Folding in Common, and one disturb the other to erect Hurdles, in all these Cases, trespass quare Vi, &c. lies.

If two several Owners of Houses have a River in Common, and one of them corrupt it, the other shall have an Action on the Cafe. If one be willing to repair House which he holds in common, or join-ly with another, he may have a Writ de Domo Reparanda against him. But one Jointenant or Ten't in Common could not have an Action of Account against the and other before 4 & 5 Anna 16. unless he were his Bailiff. But by that Statute they and their of the Executors, and Administrators, may have an wold Account against the others as Bailiffs, for receiving more than their Proportion, and against affect their Execution. their Executors and Administrators.

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If Land be given to two for Life, and to the Heirs of one of them, and Ten't for Life do Walte, he that hath the Fee can't have an Action of Waste on the Statute of Glocester. but he may have one on W. 2. 22. which enacts, That if there be two Ten'ts in Common of a Wood, Turbary, Piscary, &c. and one do Waste, the other shall have a Writ of Waste, and the Waster shall have Election before Judgment either to have his Part in certain affign'd to him by the Oath of 12 Men, (and then the Place wasted shall be affign'd for Part thereof,) or to grant that he will take no more for the Future than his Companion shall approve of. This Act by Construction extends to Jointenants, not to Parceners, because they might have the Writ de Partitione Facienda.

If one plead a Lease, Gift, or Feoffment of Tenements which lie in Livery, or a Grant of Things which he as shall conclude virtute cujus suit inde Seisitus, corbut he that pleads a Lease T. of Land, but he that pleads a Lease T. of fuit inde Grant of Things which lie in Grant, he on shall say virtute enjus Intravit, & suit inde it a Possessionatus, for a Man is not possess'd by

one force of fuch Lease before Entry.

One Jointenant can't infeoff the other, for one has no Freehold distinct from that of the other, but one may release to the other, the and by such Release the Whole shall, west in the were Releasee, for they both claim by the Foint Words their of the same Conveyance; which Words, if they be we are void as to one at first, or cease to have any Efreceifett as to him by Matter ex Post Facto, are rainful sufficient to vest the Whole in the other. One sen't in Common may inseoff the other,

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but can't release to him, for their Estates as distinct as if they were severally seis'd of several Lands. One Parcener may release to the other, for they have an entire Fee as they take it as one Heir to the same Ancestor, and on may inseoss the other, because their Estate is several, as it is severally descendible to their ne spective Issues.

## Of Estates upon Condition.

BY a Condition, as it is generally taken in this Chapter, is understood a Quality annex'd to the Realty by him that has a Estate, Interest, or Right therein, whereb an Estate may be defeated, or enlarg'd, o ereated upon an uncertain Event. Of Con ditions, some are implied in Law; other are in Deed, viz. exprelly contained in the Deed by which an Effate is conveyed; when the Feoffor, Donor, or Leffor, release a Rent payable at fuch Feafts, on Conditi on that if it be belind at the Day of Pay ment, or a Week after, Go that then b Mall re-enter into the Whote, or Part; this Case, if it be not paid at or before th Time, he shall re-enter according to the Purport of the Condition, and defeat the Eltare of the Feoffee, Oc.

There can be no Re-entry for Non-Payment of Rent without a Demand upon the Land, for the Land is the principal Debtor and the Rent issues out of it, and in Assisfor the Rent, the Land shall be put it wiew, and an Eviction of the Land evicts the

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Rent, and the Person of the Feoffee shall

not be afterwards charged.

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The Demand must be made on the most notorious Part of the Land, as if there be a House, it must be made at the Fore-door thereof; if the Feoffment be of a Wood only, it must be at the Gate or High-way, or other most potorious Place; if two Places are equally notorious, it may be made at either of em. If Rent be reserved to K. payable at K.'s Receipt at Westminster, yet if he grant over the Rev'n, the Grantee hall demand it on the Land. If the Rent be demanded at a Place not the most notorious, and in pleading a Demand be alkdged at the House, the Feoffee may trawife the Demand, for it was void. If it te referv'd payable at a Place from the land, yet it is Rent, and must be demanded at the Place appointed, observing the faid Rules concerning the most notorious Place, The Time of Demand appointed by Law, is fuch a convenient Time before the Sun-ferting of the last Day of Payment, that the Money may be minibred and receiv'd, and nt the Rent is not due till the last Minute of the 1 Saund. Mainral Day, before which Time, if the Feoffor 287. le, his Heir, not his Executor shall have it. And if the Feoffee tender the Rent to the froffor upon any Part of the Land at any Time of the Day, and the Feoffor refuse to receive it, he shall not after take Advanage of any Demand for the Rent on that. Day.

The Reason why the Law is so puntiual in. these Cases, in appointing a certain Time and

Place.

Place is, That the Feoffee may not lose his Land by being surprized with an unexpected Demand. and the Feoffor may be at a Certainty, either to have the Rent, or his Land again for Default of Payment. But if a Rent be granted payable at a certain Day, and if it be belind and demanded that the Grantee shall distrein, he may demand after the Day to enable

himself to distrein.

Regularly the Feoffor re-entring shall be feis'd of the same Estate he had before the conditional Estate was made; yet if one seis'd in his Wife's Right make a Feofiment on Condition, and die, and his Heir enter for the Condition broken, his Estate prefently vanishes, and vests in the Wife, for it is impossible that he should be seised as his Father was, in Right of the Wife. If cestuyque Use before the 27 H. 8. 10. had made fuch Feoffment and re-entred, the Estate would have been wholly in him, and yet before the Feoffment he had only an Use, for by the Feoffment the Privity between him and the Feoffees was wholly dissolv'd. If Ten't in special T. make such a Feoffment, and then his Wife die without Mue, and he re-enter, he becomes Ten't in Tail apres. Such Feoffment of Land holden Vid. fupra, by Homage Ancestrel, or of Copyhold Land escheated, destroys the Priviledge, because by the Feoffment the Continuance of the Prescription or Custom is interrupted. Lord feis'd of Rent grants it on Condition, Ten't attorns, the Condition is broken, he may (a) Contra distrein, but can't have (a) Assise without a 4 Rep. 9. b. new Seisin. Ten't T. makes a Feoffment

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on Condition, and dies, the Condition is broken, his Issue enters, if he be within Age he shall be remitted, but if he be of full Age, he shall not, for by his Entry in Respect of the Condition descended to him as Heir in Fee, he waives his Title as Heir in T. y Force whereof he might have recovered in formedon. Ten't L. makes such Feoffment, and re-enters for a Breach, he shall be Ten't Lagain, but subject to the Forseiture; for the Leffor's Right of Re-entry once vested in him ir the same, shall not be lost by the Lessee's Re-

entry for the Condition broken.

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One may referve Rent on Condition at if it be behind he shall re-enter and hold the Land till he be fatisfied, or paid he Rent behind; and in this Case, if all or art of the Rent be unpaid at the Day, he may re-enter, but when-ever the Feoffee. Mys, or tenders on the Land all the Artars, he may enter again. And Note. hat tho' the Feoffor accept part of the Rent, may enter and hold the Land till he be. aid the Whole. The Feoffor by his Reatry gains no Freehold, but an Interest by greement of the Parties to take the Profits Nature of a Distress. Therefore if one had. nade a Lease L. on such Condition, and benter'd for Non-payment, he could not ave had an Action of Debt for the Rent fore (n) 8 Qu. A. for fuch Re-entry de- (a) Vid. tats not the Leflee's Frechold.

When the Feoffor or Leffor, Oc. re-enter y Force of fuch a Condition, the Profits hall not go in part of Satisfaction; but if he Words were, that he should hold the Land

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Land till he be satisfied thereof, the Profits should be accounted Parcel of the Satisfaction, and during the Time that such Lessor takes the Profits, he shall not have Debt for the Rent in Satisfaction whereof he takes the Profits.

If a Feoffment be made to B. and his Heirs, Sub Conditione quod idem B. Solvat Talem Redditum, Go. of Proviso Semper quod idem B. Solvat, Go. in these Cases the Feoffor may re-enter for Non-payment, tho' it be not expressly said in the Deed, that he may re-enter. If a Man make a Lease T. by Indenture, provided always, and it is covenanted and agreed between the Parties, that the Lessee shall not alien, this is both a Condition and Covenant.

The Word Provise fometimes amounts to a Limitation or Qualification, and sometimes

to a Covenant.

These Words in a Deed, Quod si contingat Redditum Predictum a retro fore, give a Re-entry, if a Clause of Re-entry be added not without it. But the other Words of themselves make the Estate conditional, and yet it is usual for the Satisfaction of the common People to add a Clause of Re-entry, as it is Common to put a Clause of Distress into a Lease after the Reservation of Rent; but que Dubitationis Causa tollende inseruntur, non ladunt Communem Legen; therefore, tho' the Distress be reserved if the Rent be unpaid a Week on a Month, yet the Lessor may distrein the next Day after it

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sdue, for the Words are Affirmative, and

If an Annuity of Rent be granted pro not enterna, or pro Decimis, or Concilio, and the full be lost, or the last denied, the Annuity ceases, for it is Executory, and partly in Alion, and can't be taken by the Grantee with-ut Payment by the Grantor, and the Law will ut compel the Grantor to pay it when the Constration for which it was granted ceases. But uch Words make not a State in Land contitional, for it is executed.

Yet if a Woman make a Feoffment to a san upon account of an intended Marriage which is called a Feoffment, cansa Matrimo-ii Pralocuti, as if she gives Land with such the to a Man whom she ingages herself to sury, and his Heirs, to assure him of her with and Constancy, and she afterwards maryhim, or he resuse to marry her, or if she we Land to another to re-inseoff her, and such some whom she intends to marry, who after-f.n.b. 205. and resuses to marry her, she may enter: G. the surface of the sur

Cases of this Nature.

One gives Land in Fee, ea Intentione, that a Feossee does such an Act, or ad Facient, or pro Faciendo, or ad Propositum, yet the Words make not an Estate conditional, cept in the Case of the K. or of a Will. It a Lease T. is conditional by such like

aw favours the Modesty of Women, which streins 'em from asking Advice of Council

Clauses

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Clauses as these, viz. and he shall or shall not do fo or fo, on Pain of Forfeiture, &c.

If A. make a Feoffment on Condition that on Payment of fo much Money he shall re-enter, this is call'd a Feoffment in Mon gage.

If fuch Feoffment be made, on Condition that if the Feoffor pay fuch a Sum at a co tain Day, he shall re-enter, and the Feoffe die before the Day, yet if the Heir pay tender the Sum at the Day, he may ente tho' the Words be, if the Feoffor pay, for the Heir has an Interest in Right inth Condition, and all the Intent of the Parti was, that the Money should be paid at the Day, and it is the fame Benefit to the Fee fee to receive it from the one as from the So likewise the Executors or Adm nistrators of the Mortgagor, or in their D fault the Ordinary may tender, and fom Guardian in Socage or Chivalry. And the Heir be an Ideot, any one may doit f him out of Charity; but in other Cales t Feoffee is not bound to accept a Tender a Stranger, yet if he do, and the Heir Mortgagor agree, they may re-enter, for on nis Ratihabitio retro trahitur, & Manda æquiperatur.

If a Feoffment be, on Condition that the Feoffor or his Heirs pay 20 1. before fu a Day, &c. and before the Day he die wit out Heir, the Estate of the Feoffee shall n be avoided, for when a Condition is pol ble at the Time of the making the Estal and after becomes impossible by the Act Go

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God, the Estate of the Feoffee is unavoidable, for being executed and fettled in him, t can't be defeated but by Matter subsement, viz. the Performance of the Condiion. But if the Condition of a Bond or Recognizance be possible when made, and itio liferwards become impossible by Act of God, the Bond or Recognizance is sav'd, soft for they are Executory, and transfer no Intens, of the only give a Right of Action to be some mught in Futuro, upon the Default of the obligor, before which there can no Advantage be taken thereof. If a Feossiment be sattly made on Condition to do a Thing that is made on Condition to do a Thing that is the Halum in se, as to kill f. S. the Estate of the Feossee is absolute, and a Bond made on in the uch Condition is void, for the Estate settled and the Feossee shall not be deseated, nor shall a be Bond be forfeited for the Forbearance of such an Action, and (a) an Obligee is punishable for ta-(a) 2 Ven. and sing such a Bond to do a Thing against the 109. The But if the Condition of a Bond be improsed. ferwards become impossible by Act of

But if the Condition of a Bond be impofder bible at the Time of the Making thereof, leir or bay, the Bond is single, for it is the same and a sif there were no Condition at all; and a that to to Rome on a Day, is absolute, for the condition is repugnant to the Feoffment: wit but if an Estate be to arise, or a Duty to all nommence on a precedent Condition, that

Estate None shall take Advantage of a Condi-Act ion that is himself the Cause of the other's Go tot performing it, as if one disseise and hold

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hold out by Force the Feoffee that is by Condition bound to re-infeoff him; or if the Obligee marry the Woman that the Obgor is bound to marry.

A Condition in a Feoffment, that the Feoffee shall not alien, is void, because it is repugnant to the Estate; but a Bond with Condition that the Feoffee shall not alien

or not take the Profits, is good.

Wife, the Condition is void, and the Bong good; but if he be bound to pay Money

to the Wife, that is good.

In all Cases of Condition for Payment of a certain Sum in Gross, touching Lands, if a lawful Tender be once refused, he that ought to pay it is discharg'd for ever. But this is to be understood when a Feoffment is made with Condition of Payment of Money in Nature of a Gratuity, for if there were a Debt precedent for the Securing

whereof the Feoffment was made, tho the Feoffee refuse to accept it, yet he may have an Action of Debt for it.

A Tender may be made in Foreign Mo

ney currant by Parliament or Proclamation
Co. L. 20%. and it is fufficient to tender it in Bags with
out shewing or telling it, for it is the Par
of him that is to receive it to put it out an
tell it.

If A. be bound in 100 l. with Condition of Payment of 50 l. at a Day to come, and he tender the 50 l. at the Day, he faves the Penalty, yet if he plead the Tender and R fusal, he must also plead that he is yet redy to pay the Money, and tender it Cour

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Court, for the Money tendred was Parcel of the Sum contain'd in the Obligation, and the Tender shall be intended to be made to Save the Penalty: But if the Plaintiff take Iffue on the Tender, and that be found against him, he loses the Money for ever for his fille Plea. And if the Condition of a Bond be to do a collateral Act, and the Obligee refuse to accept a Tender thereof, the Obligor is discharged for ever. And if A. be bound in 100 Quarters of Wheat for the Delivery of 50, and tender the 50 at the Day, he shall (a) not plead Uncore Prist, (a) Contra. Day, he shall (a) not plead on the plant of they are bona Peritura, and it will be a pl. 154.

So, i Charge to keep 'em. If Obligee or Conusee that make a Descasance of a single Bond or Stanta on Condition of Payment of a lesser Bu tute on Condition of Payment of a lesser nti Sum at a Day, and the Money be tendred Mo at the Day, the Obligee or Conuse have no ther Remedy either for the Sum in the Bond, or Deseasance. For the Force of the Bond is taken the Defeasance. For the Force of the Bond is taken the if as long as the Defeasance continues in Force, have which must be till there be a Default in him to show it was made; nor can an Action be mought on the Defeasance, which only frees the tion lary from an Action, &c. but does not of it with lif give another. If Obligor be bound to the Pas infeoff the Obligee, and he make a Lease, tan indrelease to him and his Heirs, by this he inficiently performs the Condition.

inficiently performs the Condition.

If a Feoffment be made on Condition, the Feoffee pay on such a Day so much so the follow, that then he shall have the Land to mand his Heirs; this Condition is void, the feoffee by the Words precedent, it is these Words be added, that if he do the course of t

not pay, &c. that then the Feoffor may reenter, this makes the Estate conditional And if the Feoffee before the Day make Feoffment, either the first or second Feoffee may pay it at the Day; the first, be cause he is privy to the Condition; the second, because he has an Interest in the Estate.

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If a Feoffment be made on Condition that if the Feoffor pay such a Sum he sha re-enter, without limiting a Day, the la appoints the Payment to be at any Tim during his Life, for the Feoffee can be at Prejudice by the Feoffor's being allowed so long Time for Payment of the Money, because he h the Land in the mean while in Satisfasti thereof. Yet if he die before he pays it, h Heir can't perform the Condition, becau the Time limited by Law is expired. Ift Condition of a Bond be to do a transito Act, (i. e. an Act which may be done in an Place) or a local Act which may be done the Absence of the Obligee, it must be do presently, i. e. in convenient Time, for the is most for the Advantage of the Obligee, and Deed is taken most strongly against him th makes it; but if the Concurrence of both requifite, the Obligor has Time during Li unless he be hastened by Request.

If an Obligor or Feoffee be by Force the Condition of a Bond or Feoffment pay Money, or make a Feoffment to Stranger, they must do it presently, a must give Notice to the Stranger, and the shall not save the Condition by making Tender thereof, if the other result to acc y 10

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f it, for where one undertakes to do an AEt to Stranger, he must at his Peril take Care of the Performance of it. But if a Mortgagor or his Heir, O'c. tender the Redemption Money to he Mortgagee on the Day, and he refuse to mept it, the Mortgagor may re-enter. In ike manner an Obligor bound to infeoff he Obligee, shall fave the Bond by Tender nd Refulal. If the Feoffee be by Condition o mike a Gift T. or grant a Rent Charge o a Stranger, and he make a Tender, and he other refuse it, the Feoffor shall not renter, for it was intended that the Feoffee hould have something in the Land, which Re entry of the Feoffor he would lose: but if he were to make a Feoffment to a langer, and he tender it to him, and the tranger refuse, the Feoffor may re-enter, or in such Cate he is merely design'd as an affrument to convey the Land to another.

If A. be bound to B. that C. Shall infeoff I.C. has Time (4) during his Life to do it, (6) Co. L. meis he be haftened by Request, and if C. 208. b. take a Tender thereof, and D. refuse, the Bond is faved, for the Obligor undertakes Contra. ot to do any Act fimielf, but his Intent is Perk. 756. oingage for the Readiness of a Stranger to oan Act to another who shall be intended to ea Friend of the Obligee, and under his Inmuce. But in the faid Cale, if the Condiion were, that C. should infeoff D. on such Co. Lit. Day, C. mutt feek D. and give him No-211. a. in thereof, and request him to be on the

and at the Day. Sometimes in Respect of the Nature of he Thing to be done, the Obligor has not Co. L. 208.

not pay, &c. that then the Feoffor may reenter, this makes the Estate conditional And if the Feoffee before the Day makes Feoffment, either the first or second Feoffee may pay it at the Day; the first, be cause he is privy to the Condition; the second, because he has an Interest in the Estate.

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If a Feoffment be made on Condition that if the Feoffor pay such a Sum he shall re-enter, without limiting a Day, the Lav appoints the Payment to be at any Tim during his Life, for the Feoffee can be at n Prejudice by the Feoffor's being allowed so long Time for Payment of the Money, because he ha the Land in the mean while in Satisfaction thereof. Yet if he die before he pays it, h Heir can't perform the Condition, becau the Time limited by Law is expired. If the Condition of a Bond be to do a transitor Act, (i. e. an Act which may be done in an Place) or a local Act which may be done the Absence of the Obligee, it must be don presently, i. e. in convenient Time, for the is most for the Advantage of the Obligee, and Deed is taken most strongly against him th makes it; but if the Concurrence of both requifite, the Obligor has Time during Li unless he be hastened by Request.

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of it, for where one undertakes to do an AEt to Stranger, he must at his Peril take Care of the Performance of it. But if a Mortgagor or his Heir, O'c. tender the Redemption Money to the Mortgagee on the Day, and he refuse to except it, the Mortgagor may re-enter. In like manner an Obligor bound to infeoff the Obligee, shall fave the Bond by Tender and Refulal. If the Feoffee be by Condition to mike a Gift T. or grant a Rent Charge o a Stranger, and he make a Tender, and he other refuse it, the Feoffor shall not remter, for it was intended that the Feoffee hould have something in the Land, which of the Feoffor he would lose: But if he were to make a Feoffment to a hanger, and he tender it to him, and the tranger refuse, the Feoffor may re-enter, or in such Cate he is merely design'd as an infrument to convey the Land to another.

If A. be bound to B. that C. Shall infeoff D.C. has Time (a) during his Life to do it, (a) Co. L. unleis he be haltened by Request, and if C. 208. b. make a Tender thereof, and D. refuse, the Bond is faved, for the Obligor undertakes Contra. not to do any Act himself, but his Intent is oingage for the Readiness of a Stranger to to an Act to another who shall be intended to he a Friend of the Obligee, and under his In-funce. But in the faid Cale, if the Condi-tion were, that C. should infeoff D. on such Co. Lit. Day, C. mutt feek D. and give him No-211. a. ice thereof, and request him to be on the

land at the Day. Sometimes in Respect of the Nature of the Thing to be done, the Obligor has not Co. L. 208.

21C.

Time during his Life, as if the Condition of a Bond be to grant an Annuity to the Obligee, payable Yearly at Easter, the Grant must be made before the next Featt of Easter.

A Condition requiring the fole Labour of the Feoffor or Obligor, or a Stranger, as to go to Rome, &c. may be done at any Time,

nor can it be halfned by Request.

If the Feoffee in Mortgage die before the Day of Payment, the Money shall be paid to his Executors, not to his Heirs, unless they be nam'd; but if they be nam'd, the Payment can't be made to the Executors for Designatio unius est exclusio alterius. Il the Payment be to be made to Executors, and they agree before the Money is paid to repay Part, fuch a Mock-Payment is no Perfor mance of the Condition. If the Condition be, that the Feoffee shall pay to the Feoffer his Heirs or Assigns, he may pay to the Executors of the Feoffor, for they are hi Affigns in Law, and he can make no Affigns i Deed of the Money or Condition; but if the Condition be, that the Feoffor thall pay to the Feoffee, his Heirs or Affigns, it can't b paid to the Executors of the Feoffee, but his Assigns shall be taken in the natural Sens of the Word for his Assigns of the Land and where there may be Affigns in Ded the Law will not make Affigns by Con struction, and in that Case it may be paid to the first Feoffee or the second.

A Mortgagor or Obligor must on the Day of Payment feek the Mortgagee or Ob ligee, and tender the Money, Ge if the

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Mortgagor, &c. be in the Realm of England; but if he be out of the Realm of England, the other is not bound to feek him there, but shall have the same Benefit as if he had made a Tender.

And the Ten't that holds by corporal Service to the Person of the Lord, ought to feek the Lord, &c. but a Man is not bound to tender Rent any where but on the

Land.

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If one be by the Condition of a Bond or Feofiment to pay fuch a Sum at a certain Place at any Time during his Life, he ought to give Notice when he will pay it, and if he tender it according to fuch Notice, or if at any Time he meet the Obligee or Feoffee at the Place and tender the Money, he faves

the Penalty, Oc.

If a Condition be broken by Non-payment of Rent, the Feoffor may either enter, or, if he have had Seisin of the Rent, he may bring his Affile, or he may diffrein for it, lif it be such Rent to which a Distress is annex'd,) but after he has brought an Affile or taken a Distress, he can't after enter for that Breach, so if he accept a Rent due at a Day after, for these Acts affirm the Lease to have had a Continuance after the Breach of the Condition. But he may receive and acquit the Reirt, the Non-payment whereof was a Breach of the Condition, and then enter, but this must be understood of a Rent reserved on a Lease Y: which may be receiv'd as a Debt due on the Contract, but Rent reserv'd on a Lease L. could be no otherwise due but as Rent, before the 3 Rep. 64. Q-4

8 Qu. Anne, and therefore a Receipt thereof dispens'd with the Condition for the Time.

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It is most adviseable to appoint the Money to be paid at a certain Time, and Place, and then the Feossor is not bound to seek the Feossee in any other Place, nor to be there longer than is comprised in the Indenture, nor is the Feossee bound to receive it in any other Place: But if he receive it at another Place, or before the Day, it is sufficient.

If the Condition be to pay so much Money, and the Feoffer pay to the Feoffee a Horse, or give him a Statute, or a Bond, or pay Part in Money, and be allowed for the rest upon Account, in Consideration of a Debt due to him from the Feoffee, or give any other Thing in Satisfaction of the Meney, and the Feoffee receive it in full Satisfaction, this is a good Performance, tho the Thing paid be not worth the 20th Part of the Money; for the sole Intent of the Condition is to enrich the Feoffee to the Value of fo much as is express'd therein, which whether it be done in Money, or what he efteems worth the Money, is all one in Effect, and less Money may be paid at another Day or Place in full Satisfaction of the Whole, for perhaps it may be more beneficial to the Feoffee than the Payment of the Whole at the Day and Place appointed, but a less Sum can't be paid in full Satisfaction of the Whole at the same Day of Place, for it is apparent, that a lesser Sum can't be a full Satisfaction of a greater; yet a Receipt of Part, and an Acquittance under Seal in full Satisfaction of the Whole, is fufficient;

213

sufficient; because the Party by his Deed acknowledges himself satisfy'd of the Whole. But if the Condition be to give a Horse, &c. or do any collateral Act, Money given in Satisfaction discharges it not, for the Condition contain'd in the Deed can't be altered by Parol Agreement, and the Payment of Money, and the giving of a Horse, &c. can't be said to be the same Thing in Substance. And if Money be to be paid to a Stranger, he can't accept of a collateral Thing in Satisfaction, for it hall not be in the Power of a Stranger to defeat the Estate of another without a strict Performance, according to the very Words, but if Money be to be paid by a Stranger to the Feoffee, he may accept other Things in Satisfaction.

A Man makes a Feoffment on Condition that the Feoffee and his Heirs shall pay a Rent to a Stranger and his Heirs, that is a good Condition, yet such Payment is not properly Rent, because it issues not out of land, and an Affile lies not for it; and yet if it be not paid the Feoffor shall re-enter, and the Feoffee ought to feek the Stranger, for the Payment is but of a Sum in Gross. 4 leis'd of Land joins in a Feoffment with I rendring Rent to them and their Heirs, and the Feoffee grants that it shall be lawful for 'em to diffrein for the Rent, this is a good Grant to both, because B. is a Party

to the Deed.

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And here Note, That Rent, which is proerly Rent, can be referved to none but the foffor, Donor, or Lessor, or to them and heir Heirs, yet one may reserve 20 s. to

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himself for L. and a Pound of Comyn to his Heirs; but if he reserve Rent to himself or his Heirs, it is void as to his Heirs. If two Jointenants make a Lease by Deed Poll, or by Parol, referving Rent to one of them, it shall enure to both; but if the Lease were by Indenture, it would be good to him only to whom it was referv'd, because he was privy to the Lease. If two Jointenants, one for L. the other in Fee, join in a Lease L. or Gift T. rendring Rent it shall enure to both. If Lessor L. and his Lessee join in a Lease L. or Gist T. rendring Rent, it shall go to Ten't L. only, during his Life, because the Possession is wholly derived from the Estate of the Lessee during his Life; and at Law, if they had join'd by Deed in a Feoffment, the Feoffce should have holden of the Ten't L. only, whilf he had liv'd.

214.

Note, Secondly, That neither an Entry not Re-entry can be referv'd or given to any Stranger. But the Heir may take Advantage of a Condition, whereof the Feoffor himfell could not; as if the Condition be, that i the Heir pay 20 s. Oc. that then he shall re-enter, for the Heir is privy in Blood, and was disinherited by the Feoffment, and this is particular Exception in favour of the Heir on (a) Contra. of the general Rule, for (a) fuch Refervation of Rent or other Hereditament is void.

Ho. 130.

A Stranger being Grantee of a Revin ina take Advantage of a Limitation, that 49 Facto determines the Estate without Entry but at Law he had no Benefit of a Condi tion

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A Condition annexed to a State of Freehold, by such Words as these, That if the Farty do so or so, that then the Estate shall cease and be void, deseats not the Freehold without Entry; but such Words in a Lease T. avoid it without Entry, and the Grantee of the Rev'n might always take Advantage thereof; but if the Words were, That the Lessor might re-enter, the Grantee had no Benefit thereof before 32 H. 8.

Where the Estate is but voidable by the Condition, Acceptance of Rent after makes it good; but where it is void, it doth not.

Successors of Bithop, &c. shall take Benefit of a Condition reserved by him, Executors or Administrators of that reserved by Lesse Y. Cesturque Use, not his Feosses, should have taken Advantage of a Condition on a Feosses may have Benefit of a Condition in Law.

Rey'n may take Advantage of a Condition referv'd on a Leafe, which Statute has been thus expounded.

1. That it extends to the Grantees of a common Person as well as of the K. and to the Grantees of the K.'s Successors, tho the king only be named: But not to Grantees of Rev'ns on Gifts Vinfor the Word in the Satute is Lesses, and additional control of the Satute is Lesses and additional control of the Satute is the Satute is Lesses and additional control of the Satute is the Satute i

the State of the Rev'n, as when the Rev'n on a Leafe L. is granted for L. or a Rev'n on a Leafe.

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a Lease T. is granted for T. because the Act

Ipeaks of Executors of the Grantees: But not

to Assignees of the Rev'n of Part of the Land:

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in which Case the Condition being entire, and against common Right, is destroyed; crcept the K.'s Case, in whom the Condition 5 Rep. 54, still remains, [tho' he have granted Part of the Rev'n, for so much as remains in him, but the Grantee shall not take Advantage of it : ] And in the Cale of a Subject, the Condition may be apportioned by Act of Law, as when Part of the Rev'n goes to the Heir at Law, and the other to the Heir by Custom of Borough

> 3. A Power of Revocation may be extinct as to Part, and remain for the rest; for it is in Nature of a Limitation, not of a Condi-

tion.

English.

4. When Attornment was necessary, the Grantee could not take Benefit of the Con-

dition without it.

5. The Statute extends to Bargainee, of any other that comes in by Execution of the Use to the Possession, tho' they be not in the per by the Bargainor, &c. for the Act fay Affiguees to and by; but it extends not t Lord by Escheat, or Claiming by Reason of Mortmain.

6. Bargainee, Ge. can't take Benefit of Condition without giving Notice to the

Leffee.

7. The Condition must be for doing form thing incident to the Rev'n, or for the Bene fit of the Estate, as for Payment of Rent, R pairs, Ce. not for doing any Thing in grol for the Act puts Examples of the first So only

only: And by the faid Statute all Covenants and Agreements concerning the Land are transferr'd to the Grantee.

If the Rev'n escheat, the Lord shall distrein for the Rent referv'd, but shall not enter for Condition broken; but Guardian in So-

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If Land be granted for two Years on Condition that if the Grantee pay 20 s. in the two Years, then he shall have Fee, yet he shall not have Fee by paying of it; for tho'a Condition encreasing an Estate may be by Parol, yet no Freehold can pass without Livery. But if an Estate be granted for five Years, and if the Grantee pay 40 s. within the first two Years, that then he shall have fee, or otherwise but for five Years, and Livery be made, now has the Grantee a Fee conditional by Construction of Law, and jet the Words feem to make the Condition precedent; but inatmuch as the Livery can't apect, but must give a present Freehold or none, (for which Cause a Lease ?. Rem'r to J.S.'s Heirs is void,) this shall be construed Condition subsequent; for the Law will often transpose Words, that a Feoffment or Grant may take effect, as if at Christmas an Annuity be granted, or a Rent referv'd on a leale, payable Yearly at Michaelmas and Lady-day; yet the first Payment shall be at lady day, for otherwise it would not be paid Yearly. But if a Thing that lies in Grant be tranted for Y. with such Condition, the Fee thall not pass till it be performed. And the So with Condition to have Fee, and it shall be

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218.

a precedent one. As to the Authorities that feem to contradict Littleton, they ought tob understood thus, That a Lease Y. was fire made, and afterwards an executory Grant to inlarge the Estate on Condition, and in such Case the Freehold passes not till the Condi

tion is performed.

A Lease L. is made to a Man and Woman on Condition that which soever of 'em shall first marry shall have Fee, and they interman ry, neither of em shall have it for the Incer tainty. A Leafe L. is made with Condition to encrease the Estate on Payment to the Les for at a Day, and before the Day he is exe cuted for Treason, the Estate shall not en crease, tho' the Condition became impossible by the Act of the Leffor.

He that will take Advantage of a Condi tion, must enter if he can; if he can't, h must claim: For a Freehold, whether it li in Grant or Livery, can't cease by Conditio without Entry or Claim, tho' the Words are Proviso, that if he don't pay, &c. that the the Estate shall cease, and be void; whether the Conveyance were by Feoffment, Bargain

But in the Case above, where a Grant wa made for five Years on Condition to have Fee on Payment of 40 s. in the first two Years, inasmuch as the Fee pass'd from the Lessor by Construction of Law, it shall be revelted by Non-performance of the Condi tion by like Construction, without Entry of Claim. So if the Feoffee on Condition collateral, i. e. not confishing in Payment of Rent lease to the Feoffor, rendring Kent, and the Conditha tob

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Condition be not performed, the Feoffor shall retain the Land, and the Rent is extinct; and the Condition being collateral, was not fufpended by the Feoffor's taking the Leafe, as swould have been if it had confifted in Payment of Rent. So if a Man grant a Rent out of his Land on Condition, and it be broken. or covenant to stand seis'd with Power of Revocation, and revoke, in all these Cases no Entry or Claim is required; because he that ito take Benefit of the Condition is already in Possession of the Land. 10 and so a swad to

An Effate may be furrendred on Condition: But if Leffee for 40 Years, take a new leafe for 20, on Condition, Ge. or a Grant of the Rev'n on Condition, and afterwards the Condition be broken, his Lease for 40 Yars shall not revive; for it was absolutely, at li was not annexed to the Surrender, but to the tio ad Estate only. If a Guardian in Chivalry take beenseoff'd by the Infant, this makes him a ther Disor, and absolutely surrenders his Estate, and yet the Feofiment was void as against ain beinfant. Ashara a see sound of sould

A. makes a Lease L. reserving a Rose the therving a Rent in Money, Leffee will not old over, but surrenders, in this Case, in Judgment of Law, he had but a Lease for 7 stars, ab inicio. So if one make a Lease L. Vid. Bro. ind if Lessee in one Year pay not 20 s. that Coven. 16. behild the shall have it but for two Years, his cold rechold determines by Non-payment, and the state but for two Years.

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A. makes a Feoffment on Condition that 219. the Feoffee shall give the Land to the Feoffor and his Wife, in Special T. Rem'r to the Heir of the Feoffor, and the Feoffor dies before such Gift is made, the Feoffee ought to make it as near the Intent of the Condition as may be, viz. to let the Land to the Wife without Impeachment of Waste, Rem'r to the Heirs of the Body of her Husband of her Body begotten, Rem'r to the Husband's right Heirs. And if the accept a State for L tho it have not the Clause of being without linpeachment of Waste, or if she marry, and State be made to her and her Husband for her Life, yet is the Condition well performed for the receives the Estate design'd in Sub flance; and the Omission of the Privilege 220.

being without Impeachment of Waste shall not give the Heir of the Feoffor, for whose Benefit it wa omitted, a Re-entry, (a) which would defeat the

(a) 2 Rep. Estate of the Wife.

> ( Note, This Clause, without Impeachmen of Watte, gives the Leffee Power to cut down Trees, and convert 'em to his own Use; bu the Clause sans Impeachment perascun Action

Wafte does not.)

If the Feoffor and his Wife both die, th 220. b. Feoffee ought to make the Estate to the Issue and the Heirs of the Body of his Father an Mother begotten, Rem'r to the right Hei of the Husband. And if divers make a Feof ment on Condition that the Feoffee shall re-infeoff'em, and they all die before the Re feoffment, then ought the Feoffor to infeo the Heir of the Survivor, to have and to hol

to him and the Heirs of the Survivor; and

Vid. fupra 15.

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in this Case the Heirs of the Father shall only inherit: But if the Limitation were to the Heirs of the Heir, then shou'd the Heirs of his Mother's Side inherit, which would be contrary to the Intent of the Condition.

If the Condition of a Feoffment be, that the Feoffee make a Gift in Frankmarriage to one not of his Kindred, or an Estate in frankalmoin to a Layman, he must make a state L. in both Cases: Which is the same Estate which would have pass'd if the Feosfee had sed the very Words express'd in the Condition, nd a for does it appear to be the Feiffor's Intent that the Feoffee Should convey an Inheritance.

Tho' a Condition that faves an Estate be onstrued favourably, and that which detroys the Estate, strictly; yet if the Condiion be, that the Mortgagor and J. S. pay ol. at fuch a Day, and before the Day the longagor die, it is sufficient if J. S. pay ; yet if both be alive at the Day, the Mortagee is not bound to accept of it from one oly. But if a Lease for 20 Years be made otwo, provided that if the Leslees die withthe Term the Leffor shall re-enter; if one lien and die, he shall not enter till both are ad, for that is the manifelt Intent of the mile: But in the first Case, the Substance the Condition is that fo much Money be ad to the Mortgagee, and when the Act of al makes it impossible to be paid by both tharties named, if it be paid by the other, is fufficient, for it is in effect the same ding.

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When the Condition of a Feoffment is to re-infooff, or make a Gift T. to the Feoffor or to him and a Stranger, the Feoffee has Tim during Life to perform it, unless hastned by Request; but if he refuse when reasonable requir'd by those that ought to have suc Estate, the Feosfor or his Heirs may re-enter But if it be to make a Feoffment or Gi to a Stranger, he must do it in convenien Time.

If the Condition be, that the Feoffee be fore fuch a Day shall re-infeoff the Feoffor and before the Day the Feoffee die, his Effat is absolute, because when the Condition b comes impossible by the Act of God with the Time limited by the mutual Agreemen of the Parties, the Feoffee is discharged. S

Q. of this Case; for by the express Intent of i Feoffment, the Feoffee is to be but an Instrume to re-convey the Land to the Feuffor, &c. as mby shou'd he not take Care that it be perform before he dies? And in my Lord Clifford

Case, who having Licence to infeoff dive 222. a. b. of capite Lands on Condition that they ma to him a Gift T. did infeoff 'em accordin

> to the faid Licence, it was adjudged that t Feoffees were bound to make the Gift in Life, for the Licence did not extend to t Issue; and if the Feoffees should make a G to the Issue, K. might seize the Land for Dance, fault of a Licence, and the Land would place be in the same Plight as it was at the Feomion ment: So if an Advowson be granted ever Condition to re-grant it to the Grantor, the Grantee must make the Re-grant before the own to

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next Avoidance, or otherwise the Grantor would lose the next Avoidance: And why bould not the manifest Intent of the Parties also in the Case above, where a certain Time is limiud, make it necessary for the Feoffee to re-convey before his own Death; for otherwise, the neglecting to perform the Condition, which was the fole Inducement of the Feoffment, would give him an absolute Fee if he happen to die before the Time; whereas by performing it, he should have no-

When the Condition is, That the Feoffee that hall re-infeoff, or make a Gift in Tail, &c. ith forms it makes a Feoffment or Gift in To or mer leafe L. or Y. in presenti, or surro, to anomer Sher Person, or marry, or grant a Rent Charge, or be bound in a Statute or Recogume pizance, or become profess'd; in all these
can cases the Condition is broken, for the Feofform the has either disabled himself to make any
estate, or to make it in the same Plight or
dive teedom in which he received it; and being dive steedom in which he received it; and being mad once disabled, he is ever disabled, the his briding wife should die, or the Rent, &c. should be not licharged, or he should be dereign'd, &c. in he store the Time of the Re-conveyance. But to to the Feossee be dissessed, and during the last marry, or be bound in a Recognistic mace, and the Wife die, or the Recognished ance be released before he re-enters, the Constant mace be released before he re-enters, the Constant were charged.

But the the Feosse be disabled to perfore the the Condition by Attainder, or such the condition by Attainder, or such the before the Day; wet if at the Day the

no ke, before the Day; yet if at the Day the

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Disability be removed, and the Condition performed, it is sufficient; for the Feoffee can be at no Prejudice thereby; but in the former Case the Feoffee by incumbring the Land contrary to the Intent of the Condition, gives the Feoffer a Right of Re-entry, which shall not be loft, this such Incumbrances be afterwards discharged.

If a Deed of Feoffment be made without 223. any Condition, and Livery by Force of it be made on Condition, nothing passes by the Deed, because the Condition is not compris'd in it, and it is of the same Force as if

Vid. supra no Deed had been made. Before 29 Car. 2. 3. 79.

If it were agreed between two, to make a Feoffment on Condition for Surety of Payment of certain Money, and the Livery had been made generally to the Feoffee and his Heirs, it was faid, that the Estate should be conditional, because the Intent of the Parties continued at the Time of the Livery which should be intended to be made in

Pursuance thereof.

A Condition annex'd to a Feoffment of 223. 4. Grant in Fee, (tho' it be of a new Rent,) of to the Sale of one's whole Interest in a Chat tel, that the Feoffee or Grantee shall no alien, is repugnant and void; for iniquum liberis hominibus non effe liberam rerum suarun alienationem: It is also against the Benefit of Trade, and would in a great measure to strain Bargaining and Contracting between Man and Man. But he that has a Rev'n may restrein his Donee, or Lessee, from aliening and before the Statute of quia emptores terra rum, a Man might have made a Feoffment and have added, that if the Feoffee or hi

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Heirs should alien without Licence, that they shou'd pay a Fine: And some say, that he might have restrain'd the Alienation by Condition, (as K. may still do,) because he might have referv'd a Tenure to himself. Feoffment of B. Acre on Condition, that the Feoffee shall not alien W. Acre, is good; for it is not repugnant to the Feoffment of B. Acre, because that may be aliened without Forseiture. If it be the Condition of a Feoffment, that the Feoffee shall not infeoff 7. S. and the Feoffee infeoff J. N. on purpose that he shall infeoff J. S. 'tis said this is a Breach; for quando aliquid prohibetur fieri ex directe, prohibetur & per obliquum. Whatever is prohibited by Statute or Common Law, as Aliemitions in Mortmain, &c. may be prohibited by Condition.

A Condition annex'd to a Gift in T. that neither the Donee, nor his Heir, shall discontinue, is good; so is a Condition in a Feosfment made to a Bishop, that neither he nor his Successor shall alien without Consent of the Chapter, for the Acts restrain'd by such Conditions are tortious. A Condition not to alien in a Feossment made to a Husband and Wise, shall restrein their Alienation by Deed, but not by Fine; for that would be repugnant, and void: It is said, that such a Condition in a Feossment to an Infant, shall restrain his Alienation during his Nonage.

A Lessor, in respect of his Rev'n, may by Condition restrain his Lessee from aliening, and Donor may by Condition restrain the Power which Ten't T. has by Statute to make Leases for 3 L. or 21 T. for quilibet potest renunciare

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nunciare juri pro se introducto. But an Estate T. has five essential Incidents, none of which can be taken away by any Condition. 1. To be dispunishable of Waste. 2. That the Wise shall be endowed. 3. That the Husband shall be Ten't by Curtesy. 4. That Ten't T. may suffer a Common Recovery. 5. That collateral Warranty, (whether with or without Assets, if made before 4 & 5 Annæ 16.) of lineal with Assets, may bar it.

If a Gift in T. with a Rem'r in Fee, he made to the same Person, with Condition not to alien, this is good as to the Entail but void as to the Fee; therefore if such Donee make a Feoffment, and Donor re-enter some say that he shall leave the Fee-simple

in the Feoffee.

It is holden, that the Donor may make a Condition that the Donee may alien for the

Profit of his Isfues.

If Lands be given in T. on Condition, that if the Donee die without Heir of his Body that the Donor may re-enter, this is a voice Condition, for when the Issues fail, the B state determines by express Limitation; bu if the Condition be, that if the Donce dil continue, and die without Islue, that the Donor shall re-enter, this is good; and be ing in the Copulative, both Parts mult b performed before Donor can re-enter; bu if the Condition be in the Disjunctive, at 1 fufficient to perform one Part. A Lease so 20 Years is made to Husband and Wife, 1 he and his Wife, or any Child between em shall so long live; The Wife dies withou Issue, the Lease shall not determine; for the Senie

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ense is, if Husband, or Wife, or any Child, to. So if an Use be limited till A. shall ome from beyond Sea, and attain his full Age, or die, the Use shall cease if he come fombeyond Sea, or attain his full Age, or die. A Man can't plead a Condition to deat a Freehold without shewing a Record, Deed to prove it; but a Condition to deat the Grant of a Chattel, he may.

He that pleads a Deed, ought to shew it to he Court, that the Court may judge wheher it have legal Words: And of ancient ime the Court, on view, judg'd it void if aid or interlined in Places material; but low it is left to be tried by the Jury, wheher it were done before Delivery. The Deed telf must be shewn; nor can any Inrollent thereof, or Exemplification under the the Great Seal be pleaded; but by Statute a sunfat, or inspeximus of Letters Patents made that since the 27 H. 8. may be pleaded by K.'s; Ed. 6. 4. ody satentees, or any claiming under em, as well 13 El. 6.

ody satentees, or any claiming under 'em, as well 13 El. 6.

void gainst K. as any other. A constat, &c. can
the E ply be of the Invollment of Record; but
but of a Deed or any other Writing, that's
did not of Record. Nor can a Deed be involl'd
the ill duly acknowledged.
Those that come in by Act of Law as Ten't
the Dower, Statute-Merchant, &c. may plead
but Condition without shewing the Deed;
it is in Ten't by Curtesy cannot, for the Law
tesses she that he had the Possession of his
tesses in Life: Nor shall the Lord by Escheat, bethou ause the Deed belongs to him, nor any that
the same by Conveyance from the Party, or
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justify as Servants by his Command, & plead a Condition without shewing the Deed.

Ten't T. makes a Feoffment on Condition re-enters and dies; his Issue being remitted needs not in pleading this Special Matte Thew the Deed, for he by the Remitter claim

above the Condition.

Ten't to a Pracipe pleads in Abatement the Writ, (for non Tenure, ) That J. S. in feoff'd him on Condition, and re-entre and was not compell'd to shew the Dee because the Demandant was a Stranger, n did the Ten't make himself a Title against him Force of it; and it may be that on the R entry the Deed might be given up to the Feoffor. The Leflee of a Mortgagee evice by the Mortgagor, may in an Action of De for the Rent by Mortgagee, shew the Co dition and Re-entry without Deed, for he no way privy to it : And if the Feoffee a ter a Re-entry by the Feoffor, for Condition broken, enter and take away the Deed at detain it, the Feoffor in an Affise broug against him, shall not be enforc'd to she the Deed, for the Feoffee shall take no Benefit Vid. supra, his own Wrong. A Woman may in pleading

aver a Feoffment to be causa Matrimonii pr locuti, albeit she have not any Writing

prove it.

287.

If a Condition on a Parol Leafe L. (ma before 29 Car. 2. 3.) be broken, and the L for re-enter, and the Leffee bring an Affi and the Leffor plead null tort, Gc. and t Jury find the Lease and Condition, and R entry in a Special Verdict, the Court oug

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to give Judgment, that the Plaintiff shall take nothing by his Assife. But if after the Entry of the Leffor for the Condition broten, the Leffee re-enter, and the Leffor bring Co. L. 228. Affise, and the Lessee plead in Bar the Lesse L. made by the Plaintist, saving the Rev'n to him, this is a good Bar, because he owns the Rev'n to be in the Plaintiff, and the Lessor has no Remedy, for he can't plead the Condition without thewing a Deed, and the Leafe was without any. One can't plead Lease T. in Bar of an Affise, as to fay Affisa non; but he may justify by Force of the Leafe, and conclude, O' issint Sans tort; and if no Freeholder be named, he shall plead, Null Ten't del Franktenement nosme en le brief. One may plead a Reoffment with Warranty in Affile, but he must rely on the Warranty : for otherwise, if it be a Feoffment of the Party limself on an Ancestor from whom he claims in fee, the Plea would be double.

A Special Verdict may be giv'n on any Special Issue, as well as on a General Issue; and in Criminal Caules, as well as Civil.

No Judgment can be giv'n on an incertain Verdict; as if in an Action against Execuors, the Jury find upon the Issue of Plainment administre, that they have Goods in their lands not administred, but do not ascertain he Value. And if they do not try the whole therewith they are charged, as if an Infornation be brought concerning 100 Acres and House, and they find the Defendant guilty sto the Acres, but fay nothing to the House, his is infushcient as to the whole: But it hey find the whole and more, that which is

ment. And if the Matter and Substance of

the Islue is found, it is sufficient.

The Jury may find Estoppels which bin the Interest of the Land, as the taking Lease of one's own Land by Indenture, an the Court ought to adjudge according to the

(a) Cro. E. Special Matter, (a) as much as if it had been plead

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Right.

The Jury can't vary from a Verdist re corded, but before it is recorded they may vary from it. A Verdict shall be intended to be true till it be revers'd by Attaint therefore no Supersedeas of the Execution of Judgment is grantable on bringing an Attain to rever fe it. It is fineable for the Jury to ea at their own Charge after they are departed from the Bar, but it shall not avoid the Ver dict: To eat at the Charge of one of the Par verdict if it pass for him; but to eat at hi Charge after they are agreed, and have give a prior Verdict, shall not avoid it. If either Party, or any for him, deliver a Letter, of which was not produc'd in Court, it shall avoid the Verdict, if given for the same Par But if the Jury carry away a Writing not fealed up that was giv'n in Evidence this avoids not the Verdict, tho' it ought no to have been done.

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After their Departure from the Bar, they nto be kept in some convenient Place withut Meat, Drink, Fire, Candle, or Speech ith any but the Bailiff. In Civil Caufes bey may give a Privy Verdict before any udge of the Court, and then they may eat nd drink; but they may vary from it, and e Verdict which they give in open Court all stand: But in Criminal Causes of Life Member, no Privy Verdict can be giv'n. nd in fuch Causes the Jury sworn and arg'd, can't be (a) discharg'd till they have (a) Kel. 52. vin a Verdict. (b) If they can't agree in such contra.

uses, they must be carried after the Judge in 97. nts till they agree.

If a Deed be made and dated out of Engnd of Land lying here, yet if Livery be ade secundum formam carte, the Land shall 118.

The Jury may in any Case, if they will ke upon 'em the Knowledge of the Law, Ver rea General Verdict; but if they mistake Par

Law, an Attaint lies against them. An Indenture is a Deed, in Parchment or per indented on one Side or the Top, antrable to another, comprehending the fame atter: If it be actually indented, it is not cellary that it be faid to be an Indenture; dif it be called an Indenture, and not ally indented, it is no Indenture. Parts of it are but one Deed in Law, tefore after the Estate determin'd, the Part the Donce belongs to the Donor: If the offor feal his Part, it is his Deed, tho' the fice seal no Counterpart; and when the Feoffee

223.

Feoffee has seal'd his Part, it is the Deed both.

Some Indentures are in the 3d Person this Form, Hec Indentura fatta inter A. de ex una parte, &c. The Statute which fays th Bonds in the 3d Person are void, must be u derstood of those taken in other Courts of of the Realm.

Indentures in the first Person begin the Omnibus in Christo sidelibus ad quos, &c. at tho' the Words of fuch Indentures are on the Words of the Feoffor, yet when the Feo fee has put his Seal, it is the Deed of both but Mention must be made in the Deed th the Feoffee has fealed, for he is no way pri to it being in the first Person, but by t Clause of putting his Seal to it.

A Lease is made for L. Rem'r in Fee, certain Conditions, and Leslee scals it a dies; he in Rem'r is bound to perform! Conditions, tho' he fealed no Part of the denture, inafmuch as he agrees to have Land by Force of the Leafe in which the Co ditions are contained; but by Special Limi tion the Conditions may extend to the Le only.

A Leafe T. is made to A. and B. and the in they grant to be bound to the Leflor 20 1. in case that certain Conditions in Indenture were not perform'd, in an Act of Debt for this, tho' it be a Sum in gr both the Lessees must be named, albeit Deed were delivered to A. in B.'s Absence

A Feoffment is made by Deed-Poll Condition, the Feoffor enters for a Brea and gets Possession of the Deed-Poll: So

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are faid that he can't plead it, because the operty thereof is in the Feoffee. But the aw is otherwise for these Reasons: I. If in an Action between 'em the Feoffee d shewn the Deed in Court, the Feoffor ight have pleaded that it was made on ondition, Gc. and by the same Reason hen he has it in Hand, he may plead it, pecially seeing that he is privy to it. (Note, That when a Deed is shewn in ourt, it remains there all the Term; and not denied, is delivered to the Party at the nd of the Term; if it be denied, it remains Court till the Plea is determined.) 2. If two do a Trespass, one may plead a dase to the other; so may Executors a Refe to the Heir, so may a Joint-Obligor a chase to the other, tho' the Property of the ted belong not to him that pleads it; but as they are Privies, they can't plead mt Deed without shewing it. An Action he Trespass may be joint or several at the ill of the Plaintiff, but an Appeal of Death of be fued against all the Defendants. 3. The Feoffee may grant the Deed to the offor, and then the Property belongs to him; when a Deed is shewn by the Feosfor, the wrather intends that he came by it by fulthan wrongful Means. Tho'a Thing Action can't be granted, yet the Deed w, viz. the Wax and Parchment, and the antee may cancel 'em at Pleasure.

Sometimes the Law annexes a Condition an Estate, which is as strong as if it were refled in a Deed, as when one grants the kership of a Park for L. if the Grantee do

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not well keep the Park, or kill any De without Warrant, or cut down Trees, Underwoods, and convert them to his ow Use, &c. the Grantor may oust him, as grant it to any other. But without speci Damage Non-attendance of it self is no so seiture of such a private Office, as it is of publick one.

A Park is a great Inclosure privileds for wild Beasts of Chase by Prescription K.'s Grant. Every Forest is a Chase, non converso, but neither Forests nor Chases a

mclos'd.

An Officer for Life, &c. that has only collateral Fee, may be discharged of his so vice, but he shall have his Fee; but who his Fee is to be taken out of the Profits belonging to his Lord within his Office,

can't be discharg'd.

Where the Condition in Law requi Skill and Confidence, as in case of Office Oc. an Infant, or Feme Covert not oble ving it, whether they come to the Estate Grant or Descent, absolutely forseit the Interest: For such Grants were Original made in Consideration of the Capacity and In grity of the Grantee, who when he becomes qualified, the Grantor may chuse another fu Such Service. But if an Infant or Feme vert break a Condition in Law that quires no Skill or Confidence, as when ing particular Ten'ts, they make a great Estate than they lawfully can, this is Yet a Condition absolute Forfeiture. Deed binds 'em as much as if they were of Age or unmarried, for the Law will not to.

234.

Prejudice of the Feoffor, and against his express Reservation, make their Estate better than they meiv'd it. But in Walte, a Recovery had against 'em, binds 'em for ever. For 'tis gainst the publick Good, and an irreparable (a) Co. Lit. Damage to the Inheritance. But in (a) cessavit 381. 2. gainst an Injunt claiming by Descent he shall line his Age, and generally where a Statute gres an Entry, as for an Alienation in Mortmain, Ge. Infants or Feme Coverte,

hall not be absolutely barr'd.

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Regularly, he that enters or recovers by Force of an implied Condition, whether by law or Statute, shall not avoid precedent incumbrances, except when Lessee for Lise its Waste, in which (ale, the first Lessor movering in Waste, thall avoid the Leafe I for the Statute fays, he shall recover Loum Vastatum. It is said, if an Officer for life have an House that belongs to his Office, ind grant a Rent, and forfeit, that the frant remains good for his Life, sed Q. For the Granter of the Office is in no Default, and ut, by the Act of his Grantee, would lose the lenefit of having the Office supply'd by so worh a Man as might be induc'd to accept of it hit its usual Appurtenances.

By Statute, if an Officer concerning the 5 E 1.6. 16. idministration of Justice, or K.'s Treasure, 7 E. 6. 1. aftles, Oc. fell, or take Promise for the aid Offices or any Deputation, he shall forit his Office, and the Contract thall be oid, and the Buyer or Promiser, &c. ditaled to hold the said Office, and this can't redispensed with by any Non Obstante, as it

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Vid. fupra, was refolv'd in Sir Ro. Vernon's Case, who being K.'s Cofferer for Money surrendred to the K. to the Intent that the K. might gran

it to A. yet A. could not hold it.

Grants of Offices of Steward, Bailiff, & are subject to this Condition in Law, that the Grantees shall duly execute em, and they can't exercise them by Deputy, unless they were granted to be occupied by the Grantee or his Deputy.

Grantee or his Deputy.

Littleton calls Limitations Conditions in

Law, as when Land is given to Husband and Wife during the overture; and sud 235. a State ceases by Death, or Divorce a Vincu 19, which can only be Causa Metus, Frigiditatis, Consanguinitatis, or Affinitatis. By 32 H. 8. 38. all Marriages are lawful which are not prohibited by the Levitical Degrees therefore, where a Man was question'd in the Spiritual Court for warranteed in the Spiritual Court for warranteed

(a) Owere, the Spiritual Court for marrying his lat 2 Lev. 254. Wife's Sister's Daughter, a (a) Prohibition 3 Lev. 364. was granted. But a Divorce a Memâ of Thoro, which is allow'd for Adultery, shall not dissolve the Marriage a Vinculo Munimonii, for it is subsequent to the Marriage

but in the other Cases the Marriage was un lawful, ab initio.

236.

Proper Words of Limitation are, dun dummodo, quamdiu, donec, quousque, ubicus que, usque ad, tamdiu, or so long as he shallive Sole, or Chaste, or pay such a Rent or be Abbot, or Parson, &c.

Where one devises Land to his Executor to be fold, or his Land to be fold by his Executors, which is all one, if they fell no in convenient Time, the Heir may enter

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and it is no Plea that the Money offered to m for the Purchase was not to the Value of the Land; but when one devises that his fecutors shall fell the Land, they may do not take the Profits, but in the first Case they shall take the Profits, yet they shall Vid. supra, the not be Affets. Quare.

Devise of Land ad Solvendum, or Venden-ns is down, or paying so much to F. N. amounts band to a Condition, and where one has two mying 10 l. to the other, the Sister for Non-

Estates of Inheritance executed and settled in Possession by Livery, or Release of Dess'ee to Diss'or, can't be defeated by Defeasance mide after, but by Defeafance made at the Time of the Feoffment or Release they may, for que incontinenti fiunt in esse videntur, but Rents, Conditions, Warranties, Oc. may te defeated by Defeasance made afterwards, for fuch Inheritances are Executory.

Tho' a Power of Revocation of an Estate talling by Conveyance at Common Law, be repugnant and void; yet where an Estate pulles by Way of Use executed, by 27 H. 8. such a Power of Revocation of the Use, and imfequently of the Estate, has been allow'd to the good: As if a Man covenant to stand his'd to the Use of himself for L. and after to the Use of his Son in T. &c. Proviso that he may revoke any of the faid Ufes, and aftrwards revoke em, he is feis'd in Fee tgain without Entry or Claim, and he may twoke Part at one Time and Part at another.

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But by making a Feoffment or levying Fine of Part, he extinguishes his Power a

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Where the Power of Revocation is given to a Stranger, he can't any way release it for another may give me a Power over himself of his Estate, whether I will or no. But such Power reserved to him from whom the Estate passes may be released by Deed, or be levying a Fine, which is a Release in Law, so it is in Nature of a Condition, whereby he may restore himself to his sormer Estate whenever he pleases, and consequently such Power, like other Reservations, may be released. By the same Conveyance by which the old Uses are to wok'd, new ones may be limited.

## Of Discents which take away Entries

Discents of corporeal Inheritances, either in Fee or in Tail, take away the Entry of him that has Right: As if a Dissor discessed, and his Land descend to his Hell But the Descent of incorporeal Hereditaments, puts not him that has Right to his Action.

Formerly, if a Diss'or had long continued in quiet Possession, or his Feossee a Da and Year, the Diss'ee could not have en

tred.

If Land be recovered against A. and he die before Execution, or if there be a Recovery against Lessee L. and he die, and the Rem'r Man also die seis'd before Execution the Recoverer may enter without being driven

239.

to a new Action, because it shall be intended. that if his Title be good against the one, it is good wainst the other, 1111

But if, after Execution had, the Recovehe had differs'd the Recoverer, and died fisd, the Discent should take away the Entry of the Recoverer, but this is expresty conmadicted in Keilway 45. b. because the Heir is

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A. recovers against B. in a Writ of Right of Advowion, or is his Conufee of a Fine of the Advowson, and B. usurps the next Turn, A. is out of Possession, for at Law every Presentation by Right or Wrong, put

all Persons to their Writ of Right.

By 32 H. 8. 33. no dying feis'd Oc. of a Dissor takes away an Entry unless he hive been in quiet Possession for five Years after the Dissin; but tis said, that the Statute extends not to Abators or Intruders, nor to the Dissor's Feoffee; but it extends to all Diss'ins with or without Force, and to Successors whose Predecessors were dislasd, tho it only speaks of the Dis'ee and his Heirs; if Leffee L. be diffeis'd, and the Dustor die within the five Years, and then Leffee die, it is faid that Rem'r Man an't enter, for his Entry was not lawful at the Time of the Descent, as the Statute peaks; but if the Leffee had died before the Descent, the Rem'r Man might enter. After the five Years. Diss'ee must make continual Claim as before the Statute.

A Descent of an Estate in Tail also takes away the Entry of him that has Right, as when a Dissor makes a Gift in T. and Do-

nee

nee dies seis'd. But if the Donce discontinue, and disseise the Discontinuee, and die feis'd, his Islue is remitted, and Disse may enter, for the Estate that descended is vanish'd. So if an Estate T. descend, and after determine for want of Islue, Diste may enter on him in Rev'n or Rem'r.

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No Writ of Entry in the Post lay at Law 239. after a Conveyance beyond the Degrees Those that are in by Wrong, as Dissors, Oc. Successors, K. being Grantee, K.'s Patentee, Ten't by Curtely, Woman endow'd

Vid. fupra, by Diss'or, Lord by Escheat, Recoverer Conusee of a Fine, Ten't by Execution of the Use by Statute, are all in the Post, but a Woman endow'd by the Heir, is adjudged in by her Husband, and and a solution

Tho' the Land be convey'd beyond the Degrees, it may be brought back, as if the 3d Feoffee re-infeoff the 2d.

Rem'r Man after Death of Lessee L. is in

the per by the Diss'or.

To take away an Entry, there must be a dying feis'd in Demesne, either in Fee, or T. and also a Descent; therefore, if a Dissor make a Lease to A. and his Heirs for B's Life, and A. die seis'd, or if he makes Leafe L. Rem'r to K. (whose Estate can't b wrongfully develted,) and the Leffee be dil feis'd, and the Diss'or die seis'd, such De scents of a State L. take not away the En try of the Dissee. But if he in Revn d Rem'r in Fee or T. diffeife Leffee L. and di fers'd, this takes away the Diss'ee's Entry And a dying feis'd in Law is fufficient, a if an Infant's Dissor die feis'd, the Infan comes

comes to Age, the Difs'or's Heir dies before he enters, this takes away the Entry of the Dissee, (and yet if one that was only feis'd in Law make a Feoffment of other Land

with Warranty, and die, fuch Land whereof he was only feis'd in Law, shall not be

recovered in Value from the Heir.)

If a Diss'or make a Lease L. and then die fis'd of the Rev'n, this takes not away the Entry of the Dissee. And so if he make Lease for his own L. and die, the Dissee may enter, for the the Fee and Freehold descended from the Diss'or, yet he died not feised thereof. But if he only make a Lease ged Debt, and die, the Diss'ee can't enter.

If a Diss'or or his Alience die without Heir, yet the Escheat of the Fee to the Lord akes not away the Disseise's Entry; but if sin landed, the Entry had been taken away, ce a fent, the Diss'ee can't enter upon the

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et the Feoffor may enter for a Breach, for thas no Action, and if he should lose his intry, he should be without Reinedy. ke manner, he that has Title of Entry for Mortmain, Confent to Ravillment, or by core of a Devise, or Kes Patent, shall not Vid. supra, of by Bekent, because it is the only 163. Remedy.

240.

If

If a Diss'or die seis'd, and his Heir enter and endow his Wife of the 3d Part, the Diss'ee may enter on that, for the is in by her Husband, and the Law judges no mean

Seisin betwirt Husband and Wife. Mesne grants to acquit the Ten't against the Lord and his Heirs, the Lord dies, his Wife is endow'd of the Seigniory, the Acquitta extends to her, for the continues her Hus band's Estate, and the Rev'n is in the Hein A Diss'or dies seis'd, the Diss'ee abates, the Diss'or's Wife recovers Dower against him by Confession, he shall not enter on her but some fay, if he had only endowed he in Pais, he might enter upon her. On makes a Gift in T. rendring 201. Do nee dies without Islue, his Wife is endow'd by the Donor's Heir, the shall be attendan to him for the 3d Part of the faid Rent and yet the Tail is spent, and the Rent re ferv'd thereon determined. If there be Lord and Ten't, and the Wife of the Ten't be en dow'd, the thall be attendant for the Ser vices of Right due, not for those in croach'd.

VM. pag. feq.

241.

If a Dis'or after the Descent take a State A or if a Diss'or make a Lease Land grant th Rev'n to the K. yet the Disee by Re-en tring on Lessee L. develts the Rev'n.

If a Feme Dissores marry, and die seische dand her Husband being Ten't by Curresy die he mand then the Land descend, or if Ten't be Fee, or T. die without Islum or Heir, leaving un't Wife Privement Enfant, and after the Ill is born, and the land defrende to him

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After a Discent is cast, and the Diffee's Entry is taken away, if the Diss'or come to a State of Freehold in the Land by Purchafe. or Discent, the Diss'ee may enter, or have his Affife against him, for he can have no. Benefit of the Discent, who is Particeps Criminis.

If one die feis'd in Fee, or Tr and leave two Sons, and the Younger whether of the whole or half Blood abate, and have Iffue and die, yet may the Elder or his Heir enter, for it shall be intended, That the Younga did not fet up a new . Title, but that ho claimed as Heir to his Father in his elder Plowd. Brother's Absence, and that it was his Intent Com. 306. in preserve the Possession against Strangers, for this Reason, one Brother thall not have Mortdancester against the other. And the law is the fame, if there be diverso De-

Burgh Eng. Land. If one Parcener enter generally, and take he Profits, this shall be accounted the En- Hob. 1200 the try of them both; but if the enter specially, the chiming the whole Land, and taking the whole Profits, the is an Abator, and yet if feis'd be die feis'd, the other shall enter; but if y die he make a Feoffment of all, and take back it is bestate in Fee, and die seis'd, the other aving an't enter, for the Feoffment destroys the life curity.

kents, or if the eldest Brother enter into

And :

And in the Case above, if the elder Son had entered first, or if the Father had made a Lease T. and the younger Brother had diffeised the elder, and die seised, the Entry of the Elder had been taken away, for it can't be intended, that in these Cases the younger Brother affirm'd the Title of the Elder, or entred to preserve it when he disseis'd him to his own Use. So if the younger Son's Feoffee die feis'd, the Descent takes away the elder Brother's Entry; so if a Stranger abate, and the younger Brother diffeise him and die feis'd.

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If Ten't in special T. have Iffue a Daughter, and take a 2d Wife, and have a Son, who enters after his Death, and dies feis'd, this bars the Daughter's Entry, for they

claim not by one Title.

(a) Q. Wats, An (a) Usurpation by one Parcener after Partition puts not the other out of Possessi-84. on. If Parceners can't agree to prefent, the Church is not Litigious, so that the Ordinary may justify refusing the Clerk of either, and suffer

Vid. Wats, the Church to laple, but he must take the Cleri of the Eldest. If the youngest Son were

found Heir on a Writ of Diem Clausit Ex Wid. fupra, tremum, the other had no Remedy. When two Parfons presented by one Patron, at in Debate for Tythes, no Indicavit lies; th Reason of all these Cases is, because the

Parties claim by one Title.

One feis'd in Fee leaves two Sons, Ba stard Eigne, Mulier Puisne, the Bastar claims as Heir, and dies feis'd, and the Lan descends to his Issue, the Right of the Mu lier

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her, or any other Heir lineal or collateral is Remediless, whether the Descent were of an Inheritance lying in Grant or Livery, and whether the Mulier, Gc. be of full Age, or an Infant, or Feme Covert; and if the Mulier leave a Wife Privement Enseint, and the Bastard die, the Child born shall be bar'd; and the Law is the fame if the Baflard become profess'd; or if he die in his father's Life, and his Iffue enter as Heir to the Grandfather, and die feis'd; and if there be two Daughters Bastard and Mulier, and the Bastard after the Death of the Father enter with her Sifter and occupy peaceably and die, her Mue shall inherit, and if they make Partition, the Mulier shall be bound for ever. For Injustum est aliquem post Morum facere Bastardum, qui toto tempore Vite he pro Legitimo habebatur. But this Rule holds 3 Lev. 410. my as to Bastard Eigne.

But a Mulier shall not be barr'd by the Bafard's dying feis'd, unless the Inheritance descend; therefore if the Bastard leave a Wife Privement Enfeint, and the Mulier enter before the Child is born, he faves his Right: Nor shall a Mulier be barr'd by an Escheat to the Lord of the Fee. Nor shall When the Right to an Estate T. be barr'd by the

Baltard's dying feis'd. , an

; th A Mortdancester lies not between a Bafard and a Mulier: And a Bastard being

impleaded shall have his Age.

Ba If a Wife have a Child born in Wedlock, after the the next Day after Marriage, no Proof Land an be that it is not her Husband's, if he be Mu within the Four Seas, Le. in the K. of Englands

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land's Jurisdiction, unless he have an apparent Impossibility of Procreation, as if he Queen and be but 8 Years old; but it has been lately re-Inhabitants solv'd, that it shall be presum'd, that a Child of West-born after a Divorce a Mensa & Thoro is a Baminster.

flard, unless the Contrary be prov'd on the other Side.

Note, That a Bastard here spoken of is one born before Marriage, whose Mother is afterwards married to his Father, who is so much favour'd, because the Canon Law

makes him Legitimate.

If the Mulier interrupt the Bastard's Pessession, or a Stranger do it, and he agree in the Bastard's Life, (as when a Stranger enters to avoid a Fine, and within the size Years he that has Right Assents,) in this Case the Re-entry of Bastard, and his dying seis'd, bars not the Right of the Mulier, but if the Bastard recover in Assis against the Mulier, this avoids the Interruption of the Bastard's Possession by the Mulier's Bastard's Possession by the

If the Mulier come on the Land by Confent of the Baffard, he shall not avoid his Possession thereby, but if he cut down a Tree, or do any other Act which must be either a Trespass or an Entry, he thereby avoids the Bastard's Possession, for where an Act may be done lawfully, the Law will

not adjudge it to be wrongful.

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If the Bastard enter, and K. seise for a suppos'd Contempt, &c. of the Bastard, and he die, and his Issue be restor'd on Petition, the Mulier is barr'd, for the Possession of K. when he has no good Right to seise, shall

be judg'd to be the Possession of him in whose Right he sers'd. But if after the Father's Death the Mulier be found Heir of Kt. Service Land, and within Age, and K. seile, the Bastard is foreclos'd for ever; and if K. seise for a Contempt of the Ancestor, and the Isfue of the Ballard be restor'd on his Petition, for that K. feis'd without Caufe, the Mulier is not barr'd.

Any Stranger may enter of his own Head on a Dils'or, or the Feoffee of Ten't L. and devest the wrongful Estate; but a Stranger can't enter on the Feoffee of an Infant of his

own Head.

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If an Infant be diffeis'd, and a Difcent all during his Infancy, yet may he enter. But if one die seis'd, and seave a Wife Privement Enseint, and a Stranger abate and die feis'd, the Child born can't enter, for he is not so much regarded in Law, because he had no Right at the Time of the Discent.

If an Infant: present not to a Church within 6 Months, it shall lapse; if the five Years for making a Claim after a Fine, begin in the Ancestor's Life, he must claim within them; if he do not claim a Villein Hed into ancient Demesne within a Year and Day, he can't afterwards claim him; and he shall be barr'd in an Appeal of the Death of his Ancestor, if he do not bring it within a Year and a Day; Ten't T. discontinues, Discontinuee dies, and leaves an Heir within Age, Ten't Ti abates and dies leis'd, his Issue is remitted, and the Infant can't enter; if K. die feis'd, the Infant is. driven to his Petition; for in these Cases 4 Rep. 58.6-

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the Law prefers the good of the Church, the publick Repose of the Realm, Liberty, Life, an ancient Right, and King's Prerogative before the Priviledge of Infancy.

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A Descent cast of Land in which a Feme Covert has Right of Entry, shall take away the Husband's Entry, but not that of the Wife or her Heirs after his Death; but if the Woman had Right of Entry, before the married, and being of full Age, had married, the Descent cast during the Coverture had bound her. If a Rent be referv'd on a Feoffment, and if not paid in a Month, to be doubled: An Infant neglecting the Payment fhall not forfeit any Thing, but a Feme Covert chall, for the Statute Non cur-

Mert. ca. 5. rent usura, Oc. extends not to a Feme Covert.

Four forts of Men may be faid to be Non 247.

Compos. 1. An Ideot that is Non Compos from his Nativity. 2. One made fuch by 3. A Lunatick qui aliquando gaudet lucidis intervallis, who is Non Compos only for the Time while he wants Understanding. 4. One that is drunk, who is never favoured in any Case, sed omne crimen ebrietas incendit & detegit. If any of the three first be disseis'd, a Discent bars their Entry, for they can't in civil Causes disable themselves, for which Cause, if they recover their Memory, they can't in the Courts of Common Law avoid any Conveyance made by them during their Infirmity, for a Matter of this Nature is most Proper to be left to the Conscience of a Judge of Equity, but it abate Seems against natural Justice to put such Perfons

fons recovering their Memory wholly without Remedy, who were imposed upon when they wanted Understanding. K. on an Office, finding a Person an Ideot or Lunatick, may avoid 4 Rep. 126. Conveyances made by them in Pais, but b. not those of Record, and so may their Heirs after their Death. And in criminal Causes

they may disable themselves.

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The Heirs of one perpetually Non Compos. may avoid a Descent cast in the Life of such Ancestor by Entry or Action; so they may avoid a Feoffment made by them or a Lunatick; and fo Note, they have Remedy as Heirs, which the Ancestors had not; so if Father diffeise Grandfather and make a Feoffment without Warranty, and Grandfather, and Father die, the Son may enter, tho' the Father could not. There are two jointenants, one for L. the other in Fee, the Heir of him that has Fee shall have Walte, tho' the Ancestor could not.

An Infant differies A. and makes a Feoffment to B. who dies feis'd, the Infant being within Age, the Infant enters upon his Heir, A. may enter upon him; to, if a Disor make a Feoffment on Condition, reoffee dies, and Feoffor enters for a Breach.

the Diss'ee may enter upon him.

If a Diss'or be profess'd, the Descent to his Heir takes not away the Entry of the feoffee, for it is originally owing to his own Act, but the Heir of one profess'd hall have his Age. If the Ten't to a Pracipe ecome profess'd, or relign, Ge. the Writ bates not, but if he be depriv'd it shall.

Leffee T. is ousted, and he in Rev'n diffeis'd, Diss'or dies feis'd, yet may Leffee enter, for by it he defeats not the Freehold that descended. So (a) if Grantor of three Avoidances usurp the first Turn, this puts Wats, 85.

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not the Grantee out of Poffession.

If one diffeise another in Time of War. which is call'd Occupation, and die feis'd also in Time of War, Disee may enter; and if one present wrongfully to a Church in Time of War, he does not put the Patron out of Possession, the Institution were in Time of Peace. It is faid to be Time of Peace when K.'s Courts are open.

If a Body Politick die feis'd of Land, to which I have a Right of Entry, and the Land go to his Successor, yet I may enter.

#### Of Continual Claim.

IF Diss'ee make continual Claim unto the Lands, whereof the Difs'or or his Donce or Feoffee is seis'd, or he in Rev'n or Rem't make continual Claim upon the Alienee of a particular Ten't guilty of a Forfeiture, before a Descent cast, they save their Entry thereby notwithstanding the Discent. Ten't T. or by Execution be ouffed, and he in Rev'n disseis'd, yet may he in Rev'n enter to avoid a Discent or Collateral Warranty, or he may recover in Affife, and yet his Entry is not lawful to take the Profits: And some say that Lessor L. may do the same.

If one make a Lease L. Rem'r L. Rem'r in Fee, and Ten't L. forfeit, and he in Rem't L. claim, and Alienee die feised, and then he

251.

249.

( Vid.

he in Rem'r L. die, he in Rem'r in Fee may enter, for he could not enter before the Defeent was cast; so if the Father having claim'd before a Descent cast die, his Son shall enter: But if he in Rem'r L. or Antestor claim, and die before the Descent, this gives no Advantage to him in Rem'r in Fee, or to the Heir, sor the Claim of another hall not avail one that might have claim'd imself, and did not.

If there be two Jointenants and one claim, and die, the other shall enter: If Ten't T. with Warranty, have Judgment to recover a Value, and die without Issue before Exemption, he in Rem'r may sue Execution: If Seigniory be granted for L. Rem'r in Fee, and Grantee L. die, he in Rem'r in Fee shall

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Forfeiture of a particular Estate is either Matter in Pais, or of Record; a Forseime in Pais is of Things that lie in Livery, then a greater Estate passes than the Ten't in lawfully make, whereby the Rev'n or mir is devested. If Ten't L. and Rem'r an for L. join in a Feostiment, both their lates are forseited. If Rem'r Man for L. seite Ten't L. and make a Feostiment, this seites the Right of his Rem'r. If K.'s Ten't or T. make a Feostiment, the Solemnity of Livery, tending to the K.'s Disherison, a Forseiture, tho' the K.'s Estate can't be rested. But no Grant by Deed can forThings lying in Grant.

forseiture by Record is, 1. By Alienation, Fine and Recovery, whether it devest the vin or Rem'r, as in case of Things lying 252, 6.

in Livery, or devest them not, as in case of Things lying in Grant. But a Deed inroll caufes no Forfeiture, because the Deed it f which makes the Conveyance, is meerly Man in Pais, tho it be afterwards recorded.

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2: By Claim, either express, as who Ten't L. claims Fee in Court of Record, Leffee 7. brings Affile; or imply'd, as who Ten't L. joins the Mife on the meer Righ or Lessee Y. loses in a Pracipe, and brin Error for Error in Process; for (a) a W of Error to reverse a Recovery of a freebold l for the Ten't of the Freehold only, and therefor it is a Forfeiture for Leffee Y. to bring it:

Co. Lit.

(a) Dyer,

90, 5.

229. a.

that where Lessee Y. is summoned, and loses Default, he has no Remedy; but if he were fu mond, and did appear, he might have please in Abatement that no Ten't of Freehold a nam'd in the Writ; if he were not summon'd, 1 Ro. 622. Suppose that he might have an Action ground

on the Deceipt.

252.

3. By affirming the Rev'n or Rem'r to in a Stranger, as praying in Aid of, or torning to the Grant of a Stranger, (but) Ten't shall not forfeir his Estate by atto ing in Pais,) or by confessing the Action a Casu provise brought by a Stranger, or pleading covenously to the Disherison him in Rev'n or Rem'r, or by pleading Wast fait, in an Action of Waste done b Stranger, or by accepting a Fine of a Str ger sur conusans de droit come ceo que il 4 son done.

Every particular Ten't may forfeit, we ther for L. T. or by Execution, as To by Statute-Merchant, Ge. and Tent

pres, and Leffee to him and his Heirs for Life of J. S. If Ten't L. make a Lease for B.'s Supra, 285. Life, or on Condition, and B. die, or the Condition be broken, yet the Forfeiture

remains.

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If one have Cause to enter into divers lands in the same County, an Entry into Part in the Name of all to which he has a Right of Entry regains the Seisin of all in the fame County; but a general Entry into my one Parcel, regains no more than that one Parcel: And if feveral Actions be required, as if one diffeis'd by two feveral Diff'ors, or by one Diss'or, and he lease to three seveally for L. there must be several Entries: But if he lease to many severally for Years, one Entry will be sufficient; so if I be disfeis'd of several Parcels of Land by the same Person at several Times, or if several Parcels of Land be subject to one Condition, one Entry is sufficient for all; but if the Conditions be feveral, these must be several Entries. Tho' Livery within View be good, get a Claim within View where a Man may enter without Fear, is not. Livery of Parel of Land in the Name of all in the same County, passes all.

253.

If he who has a Title to enter, dare not mter for Fear of Battery, Maining, or Death, f he go as near as he dares, and claim the ands, he has prefently by his Claim such a eifin as if he had entred indeed, tho' he neer had any Seisin before. But his Fear must oncern his Person; for the Fear of the burnngot his Houses, or Loss of his Goods, is not ufficient. The Fear of Imprisonment, or

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Maybem, is not only sufficient to make such a Claim equivalent to an actual Entry, but will also avoid a Deed executed by a Man 2 Inft. 483. under fuch Fear; but the Fear of Battery is not sufficient in the latter Case, but in the first it is, for the Re-continuance of an ancient Right is favour'd in Law. In pleading, some just Cause of Fear must be shewn, and it must be no vain Fear: But in a Special Verdict, if the Jury find that the Diffeisee did not enter for Fear of Corporal Hurt, this is fufficient, and it shall be intended that they had Evidence to prove the same.

Such an Entry in Law, tho' it shall be taken as much for one's Advantage as an Entry in Deed as to avoid a Warranty, or to Tenable one to bring an Affife, &c. yet it shall fin not be so to one's Disadvantage; therefore such an Entry by the Plaintiff in Assis abates to not the Writ, but he shall recover Damages Writer the Beauty in the

from the Beginning.

Continual Claim is well made, tho it be made but once, when the Diffeise approaches as near to the Land as he dares, and claims with in or out of View, but if he dare he must enter; yet a Claim within View reduces a Freehold in Law to an actual Freehold, tho he that makes such Claim be not assaid to

A dying Seis'd and Descent within a Year dain and Day after Claim made, takes not away the Entry of him that claim'd, tho' there be soft never so many Disseisins, Alienations, or Descents within that Time, and tho' it were respond to made till many Years after the Disseising the but at Law a Descent cost within a Year and the but at Law a Descent cast within a Year and egre a Day

Day after the Diffeisin barr'd the Diffeisee not making continual Claim; but this has been alter'd by 32 H. 8. 33. Since which Statute no dying feis'd within five Years after the Disseisin takes away an Entry, and consequently the Ten't's dying feis'd within five Years after the continual Claim, takes not away an Entry, because the Ten't's continuing in Possession after the continual Claim amounts to a new Desseisin.

In the Computation of the Year and Day, he Day on which the Claim was made is the first; and at Law you could not have ken secure unless you had made a new Claim within the first Year and Day, and

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The Year and Day is in many Cases the 254. L. lime limited by Law, as Non-claim for that lime after a Fine did at Law bar all Parties, stuch Non-claim after final Judgment in a writ of Right still does; so a Villein fled to ment Demes and not claim'd by the ncient Demesn, and not claim'd by the it be ord in a Year and Day, can't afterwards be aches is'd by him: If a Man wounded die not laims within a Year and Day, it is no Felony: No must execution can be sued after the Year and Day areas a Real or Personal Actions without a Scire this it is in Tail. immediately after such

e seis'd in Tail, immediately after such Year laim he becomes seis'd in Fee, for his Ocaway spation after it is a Diss'in: And the Diss'ee ere be soften as his Diss'or continues his Occupation, or on after Claim made, so often may bring were respass: He shall recover Damages for the eisin: If Entry without any Regress, but after r and egrels he shall in Trespass with a Continu-Q 2

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Or he that makes such Claim may have an Action on the 5 R. 2. 7. and suppose that his Adversary entred where his Entry was not given him by Law, and in such Action he shall recover Damages and Costs for the first Entry, but not for the mean Profits, tho' he made Regress. And if his Adversary occupied the Tenements with Force and Arms, or with a Multitude of People when he claim'd, he may have a Writ of forcible Entry, and recover treble Damages.

One may commit a Force, three or more a Riot, Rout, or unlawful Affembly; how many make a Multitude is not determin'd, but it is left to the Judges Discretion.

This Writ of forcible Entry is grounded on the 8 H. 6. 9. and recovers treble Damages and Costs as well for the mean Occupation as the first Entry; it lies for an Entry by Force, or peaceful Entry and forcible Detainer, or forcible Entry and forcible Detainer: But there must be actual Force, and not such as the Law implies in every Trespass, Rescous and Dissin. Unusual Weapons, or unusual Number of Servants, Threats or Violence, make Force: All that go to make a forcible Entry are guilty, tho one only use the Violence.

Continual Claim made by a Servant for his Master is good, if he enter into a Part and claim, &c. or if the Master say that he dates not go to any Part of the Land, nor approach nearer than to D. and command his Servant to go to D. and claim, and the Servant do

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fo, this is fufficient, tho' the Servant had no Fear, for he doth as much as he was commanded to do, and all that his Master durst or ought by the Law to do.

But if the Master be in Health, and command his Servant to go to the Land and claim, &c. in this Case a Claim made by the Servant as near as he dares is void, for he does not do all that is commanded, nor fo

much as the Mafter durft have done.

But if the Master be sick, or a Recluse so that by Reason of his Order he can't go, and le command his Servant to go and claim for him, and the Servant go as near as he dares by Reason of Fear, &c. this is sufficient tho the Command were to go to the Land; and ret regularly when a Servant does less than he Command, his Act is void; for where a Man is forc'd to make use of a Servant, he is nore favoured than one who is able to do his own EnBusiness; and if the Servant do as much as it cible may be presumed his Master would have done to be implified it is sufficient, for impotentia excusate, and agem; when a Servant exceeds his Master's Command, it is void only so far as he hath

Weameets A Recluse, who by Reason of his Order
annot go out of his House, shall always apone ar by Attorney in such Cases where others

If a Man imprison'd be disses'd, and a Dert and ent cast while he is in Prison, yet may he dates her; for by Intendment of Law one in broach is kept so close that he has no Intelligeryant are of Things done Abroad, but if he were Q 3

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Imprisonment binds him.

Also if one in Prison, against his own Consent, without Covin, be outlaw'd, he shall reverse it by Writ of Error; but being Matter of Fact, he can't by Reason of it avoid the Outlawry by Plea, unless in Case of Fe lony, for there in favorem vice he may plead it; and when the Desendant comes on the Capias utlagatum, &c. he may by Plea reverse the same for Matters apparent as in respect of a Supersedeas, Omission of Process, &c. But quare if this can be done in another Term.

Also if one in Prison lose his Lands be Default in a real Action, he shall avoid it be a Writ of Error; but he can't have a Writ of Deceit, because the Summons was law

ful.

Records are legally the Memorials of Court of Record, which hold Plea of Actions via armis, or where the Debt or Damages amoun to 40 s. or more, and proceed according t Common Law; and fuch Courts are create by Parliament, Letters Patents, or Prescrip tion; but the Rolls of other Courts proceed ing by other Laws are not Records. The can be no Averment, Plea or Proof again a Record; and if it be alledged and denie at shall be tried by it self only. The Recor is in the Judge's Breaft during the Term, an alterable; but after the Term, it is in the Roll, and admits no Alteration, Avermen or Proof to the contrary. Null tiel Reco can't be pleaded to Letters Patents plead and shew'd forth, Non concessis may.

261.

One in Prison may on Motion be brought to the Bar, and either must answer according to Law, or elfe, the same being recorded, the Law shall proceed against him.

If one out of the Realm be differs'd, and a Descent cast, yet his Entry is not barr'd, whether he were in the K.'s Service or not.: But if he were diffeis'd before he went beyond Sea, his Entry is taken away by the Descent. Tho' altum Mare be not within the Jurisdiction of Common Law, yet the Sea of England is within the Realm of England. To be infra quatuor Maria, is by Con-Aruction to be within the Realm of England orits Dominions; yet a Man may in Truth be infra quatuor Maria, and yet out of the Realm of England.

It feems that one out of the Realm shall not by Writ of Error avoid a Recovery in a Precipe, because he may have a Writ of a higher Nature; but he may avoid an Outlawry, for otherwise he would be without

Remedy.

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Matters done out of the Realm of England concerning War, Combat, or Arms, shall be determined by Civil Law before the Constable and Marshal, and the Tryal shall be by

Witnesses or Combat.

Inany Action if the Defendant alledge, that the Plaintiff is an Alien born in France out of K.'s Ligeance, the Plaintiff may reply, that he was born in England in fuch a Place, within the K.'s Ligeance; and hereupon the Jury shall becharg'd, and on Evidence that he was born in France, &c. they shall find that he was born out of the K.'s Ligeance: On Evidence Supra, 187.

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that he was born in England or Ireland, &c. they shall find that he was born within the K.'s Ligeance. So if one plead in Avoidance of a Fine that he was out of the Realmin S at the Time, the adverte Party may alledge that he was in England at fuch a Place, and thereon Issue shall be joined, and then on Evi dence he may prove that he was out of the Realm, &c. which the Jury ought to find And in fuch Cases in a Special Verdict th Inry may find that he was born beyond Sea or was beyond Sea at the Time, &c.

Adhering to the K.'s Enemies without th Realm, was Treason before the 25 E. 3. and triable in England, but the Adherency mu of Necessity be alledg'd in some Part of Eng land. Now by 32 H. 8. 2. Treason out of the Realm shall be enquired of, tried, an determined in the K.'s Bench, or before Com missioners in such County as the K. shallar point, in fuch Manner as if it had been dor in the fame County where it is enquired of.

In an Action of Covenant on a Charte party made at Thetford in Norfolk, or an other Part of England, if an Issue be take concerning the Performance of a Matter of venanted to be done beyond Sea, it shall l tried at Therford, &c. where the Action brought, because the Contract took its Or ginal there by making of the Charter-party but generally where the Contract and the Perfo

6 Co.47.b. mance thereof are to be both out of the Realm, Hob. 11.

can't be tried at Common Law, except in cashis'or of a Bond, which (being of a particular Nissecture, taking its Course, and binding according from the Common Law) tho' it bear Date in a Formula for the Common Law)

rign Country, as in Bourdeaux in France, may be tried here; but (because the Venire for Cro. Jac. Jury must be from some certain Place ) it must 76. of Necessity be laid in some Place of Eng+ and, as in quodam loco vocato Bourdeaux in France, in Islington in Comitatu Middlesex: evi the por is it traversable whether there be such a lace as Islington.

One out of the Realm never could be

arr'd by Non-claim on a Fine.

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A Feme Covert, and he in Rev'n or Rem'r na State of Freehold, were barred at Law. y the Non-claim of the Husband, or of the unicular Ten't within the Year and Day. t c hief the 34 E. 3. 16. was made, which oran hin'd that Non claim on a Fine should be
come b Bar; and a Feme Covert and he in Rev'n
t Rem'r are expressly provided for by 4 H.7. 4 which makes a Fine levied with Proclalars; but if a Fine be levied without Proand amations, the faid Statute of Non-claim take ill extends to it; and Non-claim within Year and Day after final Judgment in a all Int of Right, is still a Bar to all, for the

all on id Statute of Non-claim does not extend on id Statute of Non-claim does not extend on it.

If a Dissee bring an Assie, and the Jury of the id of him, and the Justices will be admit of till next Assie, and in the mean Time is or die, it seems that the Entry of the solisor die, it seems that the Entry of the solisor die, it seems that the Entry of the solisor die, it seems that the Entry of the solisor die, it seems that the Suit did soling mount to a Continual Claim: So if Ten't as Fe Dower alien with Warranty, and the reignificant bring a Writ of Casa provise, and hanging

mg:

ing the Plea, the Ten't die, yet shall not th Heir be barr'd or rebutted by the Warranty for the Pracipe amounted to a Continua Claim.

An Appeal or Affife are faid to be at raign'd, when they are fet in such Orde that the Defendant is enforc'd to answe thereunto; and they are arraign'd in French but enter'd in Latin; but no Man is said t

be arraign'd, but at K.'s Suit.

If an Abbot, or Mayor of a Corporation or Parson die, and before there be a Succe for a Stranger enter into the Lands, Oc. an a Descent be cast, yet the Successor may en ter; for tho' the Stranger by Entry an Claim to him and his Heirs did gain the Fee, yet inafmuch as the Act of God wa the Cause that no Claim cou'd be made, thall not prejudice the Successor: And f the same Cause the Successor may presen notwithstanding an Usurpation of a Churc in time of Vacation.

A Grant made to or by a Body Politic during the Vacation of the Headship is voi nor can they fue till they have a Head; bu if a Lease Lebe made, Rem'r to the May and Commonalty of B. there being no May at the Time, 'tis good, if a Mayor be ch

ien during the particular State.

## Of Releases.

R Eleases of all the Right which one h Form: Noverint universi per Prasentes me lis D de B. remissse, relaxasse, & omnino de me & h light redib

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ndibus meis quietum clamasse; vel sic, pro me d' haredibus meis quietum clamasse C. de D. wum jus, titulum, & clameum qua habui, haho, vel quovismodo in futurum habere potero, de f in uno Messuagio cum pertinentiis in F. &c. Note, The said three Words remisisse, relaxaswe k, & quietum clamasse, are of the same Effect; ench and there be other Words of Release, as re-id t unciare, acquietare; so if a Lessor grant to his Leffee that he shall be discharged of the

is Lessee that he man be districted that he man be districted Rent, this is a good Release.

Releases are either express, which must be an by Deed; or implied, which may be with by the without Deed. As if the Lord disselfs the an Isn't, and make a Feossment in Fee, or Diss'ee an Isn't, and make a Feossment in Fee, or Diss'ee and Isn't Diss'or's Heir, and make a Feossment in the liffeile Diss'or's Heir, and make a Feoffment I wan Fee: This is a Release in Law of the Seigner, and both of the Right and Action of the Diss'ee in the second.

If an Obligor make the Obligee Executor, thur the accepts thereof, this in Law releases the Action: but the Duty remains, for which the Action: but the Duty remains, for which the Action:

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Action; but the Duty remains, for which is bline a may retain, &c.

If there be two Feme Obligees, and one of marry the Obligor, or if an Infant at Mayo 7 make his Debtor Executor, this is in Law Release; for as the Law gives him Power to make an Executor, it gives his Executor, the make an Executor, it gives his Executor, the make Advantages with others. But if a Feme in recutrix marry a Debtor, this is no Release. recutrix marry a Debtor, this is no Release, . or if it should be one, it would be a Deva-

me h lis Diss'ee release to his Diss'or's Lessee L. in such is Right is gone for ever; but if he disseite is Diss'or's Heir, and make a Lease L. his is bight is releas'd but during Lessee's L. for a

265.

Release in Law is more favourably taken according to the Parties Intent, than an ex-

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press Release in Deed.

The Word Right in its general Signification includes a Title, for which there is no Remedy by Action but by Entry only.

Those Words in Releases, qua quovismoda in futurum habere potero, are void, for a men Possibility can't be releas'd, therefore if the Son should make such a Release to his Father's Diss'or in the Father's Life, yet migh he enter after his Death, unless there were a Clause of Warranty in the Release. If Father disselse Grandsather, make a Feossment and Father and Grandsather die, the Son may enter, but if there were a Clause of Warranty he should have been barr'd.

A Right to a Rev'n or Rem'r may be prefently releas'd, for one may have a presen Right to them, the it can't take Effect in Possession, but in future. Husband makes Lease L. and dies, the Wise may release he Right of Dower to him in Rev'n, (because she can't recover her Dower against the Lessee In without binding his Rev'n) yet she has no pre-

fent Caufe of Action against him.

A bare Authority can't be releas'd, there fore the Executors to whom one devises the they shall sell his Land can't release to the Heir; so if cesturque Use had devis'd that he Feossees shou'd sell the Land, and they have made a Feosseest over, yet might they have sold the Use.

But tho' these Powers in Strangers can't be vid. supra, releas'd, yet a Power of Revocation in the second s

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If the Plaintiff release all Demands to the Bail in the Queen's-Bench and afterwards Judgment be given against the Principal; Execution may be fued against the Bail; for in the Q.'s-Bench when the Proceeding is by Bill, the Bail are not bound in a certain Sum to the Plaintiff, but only undertake that the Defendant shall pay the Condemnation-Money, or render his Body to Prison, so that they are but in nature of failors to the Defendant; but in the Common-Pleas the Bail are bound to the Plaintiff in a certain Sum: So if the Conusee of a Statute release to the Conusor all his Right to the land, yet may he fue Execution, for he has no Right to the Land, but only a Possibihty.

Regularly none can take a Release of a bare Right to Lands unless he have a Free-hold in Deed, or in Law, or a Rev'n or Rem'r in Fee, Tail, or for L. vested in him at the Time of the Release; yet it is not necessary that such Rem'r or Rev'n be immediately expectant on the Estate in Possession; but if the particular Ten't be dissess'd, a Release to them in Rev'n or Rem'r during the

Rossession of the Dissor, is void.

The Vouchee having enter'd into the Warranty, and the Ten't to a Pracipe notwithstanding he has alien'd, may take a Release
from the Demandant, for they are Ten'ts in
Law as to him, and it is presumed that they are
as much concern'd to answer his Action as if
they were Ten'ts indeed. An Annuity payable
by the Parson, may in Vacation be releas'd
to the Patron, for he is the only Person, who by
the Temporal Law has then an Interest in the
Church;

267. AL.

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Church: But it seems that a Release to the Ordinary only is not good, because it is a Temporal Thing. One Leffee T. may take a Release of another, as if such Lessee be oufted, and Leffor diffeis'd, and Difs'or make a Lease T. the first Lessee may release to the fecond: But a Diss'ee can't release to his Diss'or's Lessee T. but to his Lessee L. he may. A Feme may release her Right of Dower to Guardian in Chivalry, because a Writ of Dower lies against him, and the Heir shall

take Advantage of it.

There is jus Proprietatis, and jus Possessionis, and he that has both is faid to have jus Duplicatum, or droit droit; the Difs'ee has the Ift, the Diss'or the 2d, and if Diss'ee release to him, he has both. Regularly when a bare Right is released to one that has jus Poffessonis, and afterwards another by a mean Title recovers the Land from the Releasee, the Right of Possession draws the naked Right with it, and leaves no Right in the Releasee; as if A disseise the Diss'or's Heir, and the Diss'ee release to A. and then the Dits'or's Heir enter upon A. or if Diss'ee disseife the Dissor's Heir, and make a Feoffment, and then the Diss'or's Heir enter upon the Feoffee; in both Cases the meer Right is, together with the Possession, vested in the Heir of the Diss'or who by his Entry wholly defeats the Estates of the Releasee, or Feoffee; for if the naked Right should remain in them, it would be against a known Maxim of Law which will Dyer 1. p. 7, not suffer a Chose in Action, (in any exceptions as p. 208. the K.) or a bare Right to be transferred to droit a Stranger by any Act of the Party whatsom Re

But ted a ever.

But if Donce in T, discontinue, and Donor release to the Discontinuee, and Donee die, and the Issue recover, the Rev'n remains in the Discontinuee; for the Issue can recover but the Estate T. and the Donor in this Cafe, like the Diss'ee in the former. shall not have again what he wholly parted

with by his Release.

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If Diss'ee diffeise Diss'or's Heir, or if a Time having Right of Dower diffeife the Heir, and he re-enter, yet their former Right remains: So if one diffeise Diss'or's Heir, and infeoff the Diss'ee's Heir apparent of full Age, and Diss'ee die, and then the Diss'or's Heir enter, &c. yet the ancient Right of the Heir of the Diss'ee, Oc. remains, for in all these Cases the Right is vested in the Parties

by Act of Law.

If a Diss'ee release to the Diss'or of his Disor's Heir on Condition, and it be broken; or if he disseise him, and make a Feoffment on Condition, and enter for a Breach, and then the Heir enter, the Diffeise's Right remain in him; but if the Heir had enter'd before the Condition broken, the Diss'ee's Right had been gone for ever; for the Heir of the Dissor is not subject to .. the Condition, because he claims not under the Conveyance to which it is annex'd; but by re-continuing his Possession wholly defeats all Conveyances aked made since he was disseis d.

The Diss'or's Heir has the Freehold in 1 be will law in him before he enters, and a Fine fur . d to troit tantum, Surrender by Ten't L. to him afform Rev'n, Bargain and Sale by Deed inden-But and enroll'd, covenant to Rand feis'd

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268.

pass a Freehold in Law before Entry
(a) Moo.Fol. (a) but a Common Recovery vests no Freehold
in Deed or in Law, before Entry or Execution

Sued.

If the Ten't in a Pracipe seis'd in Fee, confess himself to be a Villein to A. and to hold the Land in Villenage of him, by this A. is actually seis'd without Entry, for the Possession of his Villein is thereby become his Possession.

The Estate which makes a Man Ten't to the Pracipe, is said to be the Freehold, not

the Rev'n, Oc.

aid him in Rev'n or Rem'r, and the Release made to him in Rev'n or Rem'r shall aid the particular Ten't, as much as if it were made to them, but it shall not be pleaded by them, being Privies in Estate, unless

they shew it.

If two Ten'ts in Common, or several Ten'ts grant a Rent of 40 s. out of their Land, and after the Grantee release to one of 'em, this extinguishes but 20 s. but it Lessor L. and Lessee grant a Rent in Fee, and the Grantee release to one of 'em, this extinguishes the Whole, for it is but one Rent issuing out of both their Estates, but in the other Case there are several Rents.

If there be Lord and Ten't, and the Ten't be diffeis'd, and the Lord release to him all his Right in the Seigniory or in the Land this shall extinguish the Seigniory, for the Leffee is Ten't to the Lord in Right and Law for at Law, if the Diss'ee's Beatls had been taken, and he had replevy'd them, he might have compell'd the Lord to have avow'd

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upon him, or upon the Matter shewn, have abated his Avowry, and his Heir of Kt. Service Land should be in Ward, or pay Relief; if he die without Heir, the Land shall Escheat. And notwithstanding the Lord accept Rent of the Diss'or after the Title of Escheat accrued to him, yet it is said that he may have a Writ of Escheat, because Rent may be paid by a Bailiff, but if he accept of Fealty which must be done by the Ten't in Perfin, or avow for the Rent in a Court of Record, he shall be barr'd of his Escheat: and if the Diss'or had made a Feoffment, or had died feis'd, and the Land had descended to his Heir, before the Diss'ee had died without Heir, there had been no Escheat at all, because the Lord had a Ten't in by Title; and if the Diss'ee die without Heir. and then the Diss'or make a Feoffment or die seis'd, and the Land descend to his Heir, and the Lord accept the Rent of the Heir or Stoffee, he shall be barr'd of his Escheat, because they are in by Title.

A Release of a Rent Charge to Diss'ee is toid, for there is no fuch Privity between the Diss'ee and Grantee, as there is in the Case above, between the Lord and his Ten't being diffeis'd, because the Land only

is charg'd.

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By 21 H. 8. 19. the very Lord may avow in Lands within his Fee, without naming any Person in certain: But he may and fill avow at Law if he will. And not-Law dents must be observ'd, and therefore the beet lord must alledge Seisin by the Hands of

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Some Ten't in certain within 40 Years. And the Plaintiff shall have all the Advantage that he had before, as Aid, Go. Disclaime only excepted: For he can't disclaim to hold of the Lord, because he avows on n Person in certain. Tho' the Words of the Act be, if the Lord distrein in the Land ho den, yet if he come to distrein, and th Ten't drive the Beafts in the Lord's View Vid. fupra, out of the Land, and he diffrein in other band, yet it is within the Act.

245.

If Donce or Leffee L. be diffeis'd, a Re lease by the Donor or Lessor is good to en tinguish the Rent, which still continues b tween em, in Respect whereof the Done or Lessor must still avow on the Donce Leffee for the Rent behind, but nothing the Rev'n passes, for the Release can't et large the Right of the particular Ten't, wh at the Time has no Estate in the Land.

So if Donee discontinue, and then the Donor release to the Donee, he passes no thing of the Rev'n, but yet he extinguish the Rent, for the Donor must avow on the Donee still, for if he should avow on the Discontinuee, the Rev'n would by his ow

269. fhewing appear to be out of him.

If there be very Lord and very Ten't, i. if the Lord have a Fee in the Seigniory, and the Ten't in the Tenancy, and the Ten make a Feoffment, and the Lord release Lord the Feoffor before he has accepted the Feoff for his Ten't, this Release extinguishes no the Seigniory, for tho' the Lord may avo on the Feoffor, yet he can't be compell'd in the do it, nor is the Feoffor Ten't in Right than in

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the Lord. And if the Feoffee give the Lord Notice, and tender all the Arrears, he shall compel him to avow upon him, if he avow on any one in certain; he shall also compel the Lord to avow upon him after the Feoffor's Death, for the Lord can't avow on the Heir of the Feoffor, because nothing defeended to him, and there never was any Privity between him and the Lord. But if the Lord accept the Rent of the Feoffee before the Law compels him, he loses all the Armrs due in the Time of the Feoffor, for after he shall not avow on the Feoffor, nor on the Feoffee, for the Feoffor's Arrerages, one fir it may be presum'd that he would not have the discharged the Feoffor, unless he paid him all goods Arrears. But if he accept the Rent of the Feoffee due in his Time, after the Feoffor's Death, or of Ten't that has forejudg'd Mesne, he shall not lose the Arrears due the in the Time of his former Ten't, for the law compell'd him then to accept 'em for Ten'ts.

A Writ of Customs and Services lies not n the A Writ of Customs and Services lies not in the against a Feosfor, because he is not Ten't in ow Right to the Lord, and if the Lord distrein. for Rent, and a Rescous be made, an Assise lies not against the Feoffor and the Rescuer, for the Feoffee is Ten't, and the Distress
Ten has taken, and the Violence done to the last taken, and in his Possession, and an Assemble for Rent is not so merely Possessory as an always is, for if the Lord has been seis'd of avo hore Rent than of Right is due by Incroachment and the Ten't, he can't recover in Assiste more F. N. B. 10. The than is due, but in Avonry he may. But G. the

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the Lord's Release to the Feoffer discharge all the Arrerages due from him before th Feofinent, for so far as the Feoffor is liable to the Lord's Avonry, so far may be take a Releas from him, but such Release can't extinguil the Seigniory, as is aforefaid, for which Cause the Feoffee can take no Benefit there of, any further than as to the Discharge of th Arrerages during the Feoffor's Time, but the Feoffor may plead to the Lord's Avonry, Release to the Feotfee, for thereby the Seig niory, which is the Ground of the Avowry is extinct. So if a particular Ten't after Waste done grant over his Estate, and h in Rev'n release to the Grantee, the Granto may plead it in an Action of Waste again him, for if he in Rev'n should have Judgmen against him, he would recover the Place waste against the Releasee: So the Vouchee, or Ten't to a Pracipe after a Feoffment made or an Abbot, &c. having alien'd contra for mam collationis, may plead a Release to th Ten't of the Land, for the Demandant can recover against them without avoiding such Re leafe.

There be four Kinds of Avowries for Services. 1. Super Verum Tenentem, when both Lord and Ten't have Fee. 2. Super Verum Tenentem in forma pradicta, when a Leafe Lor Gift in T. is made, Rem'r in Fee. 3. Upon one as his Ten't by the Manner omitting Verle, as when the Lord has a particular Estate in the Seigniory, and such Avowry shall be made by Donor or Lessor upon Donee of Lessee. 4. Sur le Matter en la Terre, as within his Fee, and Seigniory, as when Ten't by

Kt's Service made a Lease L. and left an Heir in Ward, the Lord should so avow pon the Lessee.

A Release by a Lessor to his Lessee T. or 270. Whaving enter'd by Force of fuch Leafe, is ood, in Respect of the Privity between m, for it would be in vain for the Lessor omake Livery of Seisin to one already in . offession of the same Land by his own lase; and if the Lessee ?. make an Underale for Years, yet may the Lessor release to he First, but not to the 2d Lessee, and if ne make a Lease T. Rem'r for Years, and effor release to him in Rem'r, after the th Lessee has entered, such Release is od to enlarge his Estate. ain

But a Release to Lessee Y. in Futuro, or y Lessee Y. before Entry, tho' it may exaguish the Rent reserv'd, (which is a Charge on the Interest into whose Hand soever it mes,) yet it can't enure by Way of Eniging an Estate, because the Lessee has no offession; yet he has such an Interest as is

antable over.

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And since the Statute of Uses a Release to a Ser ogainee for a Year, &c. is good, because the

both state executes the Possession to the Use, and if serum the be any Reservation on a Lease Y. tho but see L a Pepper-Corn, it is a sufficient Consideration 2 Vent. 35.

Jpoi state an Use, and consequently to make the gree capable of a Release.

If a next Avoidance be granted to two, 11 b 4 may release to the other before the tee of such becomes void, not after, because it this then as a Chose in Action then as a Chose in Action.

If one make a Lease L. Rem'r L. and Les-If one make a Lease L. Rem'r L. and Lessele fee die, a Release to him in Rem'r before for Entry is good, for he has a Freehold in Law.

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The Lessor's Release to a Ten't by Sufferance is void, for he has a Possession with mig out a Privity. But if one enter of his own he Wrong, and take the Profits, his Words to hold at the Owner's Will can't qualify the Wrong, for he is a Diss'or, and the Own er's Release to him is good; or if the Own er consented, he is Ten't W. and then the Release is also good. Note, That the it b generally true, that he who enters wrongfull and takes the Profits is a Dissor, yet this ist be-understood where there is no particular Estat in the Land, but if there be a Term in Este and one enter claiming the Term, and pay the Rent, &c. he shall not be a Diss'or, but a Action of Debt or Waste Shall tie against him

and one may be an Executor of his own Wrong ! a Term.

There are four Kinds of Privies. 1. I 271. Estate, as the particular Ten't, and her

Rev'n or Rem'r. 2. In Blood, as Heir t the Ancestor. 2. By Representation, as Exc cutor to the Testator. 4. In Tenure,

Lord and Ten't.

Before 27 H. 8. 10. if a Man had made Feoffment to the Use of his Will, and after wards the Feoffee had releas'd to the Feoffe and his Heirs, this Release was good; fo in fuch Case the Law intends that the Feo for ought presently to occupy the Land the Will of the Feoffees, and so the La make

mikes a Privity between them. And the foffor should be sworn on a Jury by Comin mon Law; and where 2 H. 5. 3. required the hight be returned; as to a Feoffment to the Use of a Will, Vide Supra, 165.

An Use is a Trust or Confidence repos'd the asome other, which is not issuing out of An Use is a Trust or Confidence repos'd and, but as a Thing collateral, annex'd in on hivity to the Estate of the Land, and to the Person touching the Land, viz. that by duyque Use shall take the Profits, and the his Direction; so that Cesturque Use has far either jus in re, nor ad rem, nor any Re-Effectly but in a Court of Equity.

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An Use is either rais'd by Transinutation Co. L. 271. the Estate, as by Fine, Feoffment, &c. b. out of the Estate of the Owner of the and, as by Bargain and Sale, Covenant to and seis'd, &c. A Feossee to the Use of A. this Heirs before 27 H. 8. bargains and he is to C. without giving Notice of the Use, thing passes, because he was seis'd to the sex seis of B. before, which Use can't be altered to teninguished without Transmutation of Possession, and there can't be two Uses ade the same Land in Esse at the same Time.

after dissertes one to B.'s Use, B. not knowing costs ros, and bargains and sells to C. C. has an executed by the Statute, which shall not huested by B's agreeing afterwards to the Feo lin, for tho' an Agreement subsequent be nd a La supon as equivalent to a Command prece-

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dent, yet the Law will not by such a Fiction tak from C. an Use for good Consideration settled in him.

Releases either enure, 1. By Way of en larging an Estate; or, 2dly. By Way of Mitter le Estate; or, 3dly. By Way of Mitter l Droit; or, 4thly. By Way of Extinguish ment.

273. As

As to the First, it is necessary that the Parties to them be privy in Estate, therefore if a Donee or Lessee make an Under-lease, Release by the Donor or first Lessor to the second Lessee is void, but a Lessor L. or may release to the Husband of his Lessee and his Heirs, &c. And if one make a Lease? Rem'r L. and then release to the Lessee and his Heirs, he thereby enlarges his Estatin Fee.

If a Lessor T. release to his Lessee, or to Ten't by Execution, all his Right withon saying any more, the Lessee has an Estate if he release to him and his Heirs, he has Fee, &c. for such Release is in this Respe like Livery of Seisin, which being ma without Words of Inheritance, gives but

State L.

If a Lessor release to his Lessee pur and Vie, he gives him an Estate for his ow

Life.

If one make a Lease for 10 Years, Ren for 20 Years, and he in Rem'r release to the first Lessee, the Release shall have 30 Year for his Term of 10 Years shall not drown'd, because a Chartel can't be drown ina Chattel. ak

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If I grant the Rev'n of my Ten't L. to another for L. I can't have Waste; but if I after release to my Grantee and his Heirs, he shall have Waste for Waste done after such Grant of the Inheritance to him.

But where a Release enlarges an Estate, the Release must not only be Privy, but must also have an Estate; therefore, if an Infant's Lessee L. grant over his Estate, and the Insant at sull Age bring a Dum suit insratatem against the Grantee, who vouches the Grantor, a Release by the Demandant to the Grantor and his Heirs, is void as to enlarge his Estate, for it is manifest that the Release can't enlarge the Estate of him that has wo Estate.

2. Releases that enure by Way of Mitter le Estate must be also between Privies, viz. Parceners or Jointenants, but such a Release does not require any Words of Inheritance, whether it make a Degree, as when it is made by one Parcener to another, or one Jointenant to one of his Companions, or whether it make no Degree, as when it is made by one Jointenant to all the rest.

If there be two Parceners of a Rent, and one of them marry the Ter-tenant, and the other Release to her, this shall enure by Way of Mitter le Estate, and yet the Rent was suspended at the Time of the Release; but if she had released to the Husband, it would have enured by Way of Extinguishment. Quare, How a Release to both Husband and Wife shall enure.

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3. Some Releases enure by Way of Mitter le Droit, which transfer the Right of the Releafor to the Releafee, as when Diss'ee releases to Diss'or, which makes his Estate

rightful which was wrongful before.

Such a Release may be on Condition, but a Condition can't be releas'd on Condition; nor can a Villein be manumitted, or a Grant attorn'd to on Condition subsequent, but a Condition precedent is good in both Cases, for there is no Actornment or Manumission before it is perform'd.

K. may make a Denizen, or grant a Pardon on Condition either precedent or subse-

quent.

A Release of a bare Right for a Day, or an Hour, &c. is as good as if it were made to the other and his Heirs, &c. for a Disse can't release Part of his Estate in the Right, because he has no Right to any Estate but that whereof he was disseis'd, therefore hemust re-

lease his Right to that or none at all.

Neither is it requisite that there be any Privity between the Parties to fuch Release, as when Lessee L. makes a Lease L. Rem's in Fee, and the first Lessor releases to the 2d Leffee, this absolutely bars the Releafor, and the Rem'r Man shall take Benefit of it; and if a Dissor make a Lease L. Rem'r in Fee, or a Lease L. only, and the Diss'ee releale to the Lessee L. it shall enure to the Benefit of him in Rem'r or Rev'n, and fuch Releases are said to enure partly by Way of Mitter le Droit, and partly by Way of Extinguishment. But

275.

274.

But he in Rev'n or Rem'r shall take no Benefit of a Release of all Actions to Lessee L. Neither is Privity requisite in Releases which enure by Mitter le Droit only which are faid to enure by Way of Entry and froffment, as if one be outled by two Difeifors, Abators, or Intruders, and releafe

o one of them, or if a Donee in T. or leffee L. be diffeis'd by two, and after-

ands he and the Reversioner release to one sthem, the Releasee shall hold the other nt in such Manner as if the Diss'ee, &c. had ntered and infeoft'd him: But if Lessee

lone make a Release to one of them, it ade the both, for if it should the both with the sade the both with the sade the both with the sade the both the both the sade the both the both the sade the both th

that the L. in the fecond, and the Rev'n

were Strangers to the Release, which tange Transmutation of Estates the Law

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ease, any ill not suffer.
But if K.'s Lessee L. be disselved by two, of the disselved release to one of them, the Release as a sor, in distribute a State for Life. So if two intenants make a Lease L. and after distribute releases to one, he shall the releases to one, he shall the releases and because the Dissin was fuch tofa State L. and the Release enuring by ay of 10f Entry and Feoffment, does not diminish Extended the Release, nor result Athe other out, because the Dissin was Estate of the Releasee, nor revest an Estate my not concern'd therein, but only devests Estate which the other Jointenant gain'd by

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If Lessee ?. be ousted and Lessor dissen's and Lessee release, the Dissee may ente but if Lessee L. be disseis'd and release t the Diss'or, the Lessor can't enter, for the Diss'or has a Freehold whereon the Release of Lessee L. may enure, but he has no Ten for Y. Sc. And it is plain in the first Ca that the Lessor might recover in Assis before the Release, tho' he could not take the Profits, an after the Release he may both recover and ta the Profits, for the Estate gain'd by the Diss being wholly defeated, if the Diss'or show maintain an Action against him for the Profit it must be grounded on the Release of the ba and naked Right of the Lessee Y. which can't transferr'd, but in the 2d Case, Lessor ca have an Affife during the Life of Leffee L.

If two Jointenants be disselved by two and one of them release to one of the Dissors, he shall not hold out his Companion, for if this should enure by Way of Enand Feoffment, it would not only devest Estate of the other Dissor, but revest the the Othe

Release.

Two Femes disseise a Man, and one them marries, and the Dissee releases to Husband, this enures to the Advantage both Dissors, for the Husband is in a Maner in by Title, and it would be a hard of struction to make such a Release enure to out Wise, in Right of whose Estate alone he was abled to take the Release, but if two Worbe Dissors, and one take Husband, and Disserved to the other the becomes

Co L. 278. Diss'ee release to the other, she becomes

If two Diss'ors make a Lease L. or Y. a Release to one of them enures to both, for if hould enure by Way of Entry and Feoffment, the Releasee would avoid his own Lease. Mortgage on Condition after Condition broken is dead differs'd by two, and Mortgagor releases to one of them, this enures to both, for they did no Wrong to the Mortgagor, and he releases not a Right to an ancient Estate devested by Wrong, but a Title of Re-entry by Force of a Condition which shall not by Construction of Law differ the Estate to which it was annex'd without an express Re-entry, according to the Words of the Condition.

A Release to one joint Feosfee enures to the word all his Companions in Respect of the condition.

in and all his Companions in Respect of the Warranty which the Law presumes that two sure by Way of Entry and Feoffment, would be of the stated, the Estate hairs. Geated, the Estate being defeated to which it

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If he in Rem'r L. disseise Ten't L. and then Ten't L. die, the Diss'in is purged, Vid. Cound he becomes Ten't L. for the Law more 42. b. hen Ten't L. die, the Diss'in is purged, Vid. Co. L. aspects a leffer Estate by Right, than a larger Estate by Wrong.

ties,

If Diss'ce, or he whose Rev'n or Rem'r is evelted by a Forfeiture, release to the Ten't the Land whether he be in by Feoffment Dis'in, such Release if the Releasor had light of Entry deseats all mesne Titles, beause it enures by Way of Entry and Feofftent. Therefore if B.'s Diss'or infeoff C. ith Warranty, who infeoffs D. with Waranty, who is diffeis'd by E. B.'s Release to defeats all the mean Estates and Warran-

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ties, for it is made to a Dissor, who come not to the Land in Privity of the Estate to which the Warranty was annex'd, and all the Right of C. and D. to the said Estates being wholly defeated by the Release of B. their Re-entry can' recontinue their former Possession, but they mube Dissors anew.

277.

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So if a Diss'or's Lessee L. alien in Fer and then the Diss'ee release to the Alienee the Diss'or can't enter for the Forseiture And is a Diss'or die seis'd, the Diss'ee being within Age, and a Stranger abate, an Diss'ee being of full Age release to the Abator, the Heir of the Diss'or shall neve enter.

But if Lessee L. be disseis'd, and the Diss'or be disseis'd, and he in Rey'n releated the 2d Diss'or, the first may enter ohim, and if Lessee enter, he leaves the Rey'in the first Diss'or; for the Entry of himi Rey'n was not lawful, and consequently be Release cannot enure by Way of Entry and Feet ment, therefore the Estate of the Release beindeseated by a mean Title, the Right of Possessing

Vid. supra, draws the naked Right along with it.

Not withstanding a Release by one who Entry is lawful enures to many Purposesh Way of Entry and Feossement, and therefor if a Disserting and Feossement without expressing any Condition or if a joint Diss'or grant a Rent, and the Diss'ee release to the 2d Feossee, or the othe joint Diss'or, the Condition or Rent a avoided, because the first was not express on the Feossement, and the 2d was no granted by the Release. And such a Release

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hafe takes away all wrongful Titles, as if A diffeise R. to C's Use, and B. release to Vid. supra, A this takes away C's Agreement to the 359. Disin. Yet if a Dissor make a Feofiment on Condition, and Dise release to the Feoffee; or if he grant a Rent, and then Dise release to him; such Condition or Rent remain, for one shall not avoid 'emagainst his own express Acceptance or Grant by Force of such a Release, (and yet fthe Diss'ee had entered, and made a Feoffand ment to him, they had been avoided.) If the two Dissors make a Feoffment, and take never tack an Estate L. or T. a Release to one nures to both, or if two Differs be difaid, and release to their Disor, and then eleat iffeise him, and Dits'ee release to one or er o oth, yet the 2d Dissor may enter, for the aw will not make fuch a Construction of what Release as to enable a Man thereby pavoid his own Feoffment or Release and the Heir of a Difsor endow his Wife ex file Heir of a Difsor endow his Wife ex finsa Patris, and then the Diss'ce telease to nent.

Neither shall Acts done to the Dissor be toided by the Release of the Disee, as if the Lord confirm his Estate to hold by lester trices, or if Eltovers be granted to him to burnt in his House, or a Warranty be ude to him, they shall not be lost by such clease.

An Alien differies F. S. and is made a enizen, and then J. S. releases to him, K. all not have the Land, for it is as it were new Purchase, but if the Alien had been

a Feoffee, K. should have the Land, for it is intended that the Feoffee has a Warranty, by Force of which he may preserve his Estate or recover in Value if he lose it, which I suppose K. may take Advantage of, as being annex'd to the

(a)3 Rep.2. Estate, (tho' he can't claim a (a) meer Right of a real Action as forfeited to him,) and K. shall not lose his Possibility by such a Release, but th

Diss'or is merely in by Wrong.

The Lord differifes his Ten't and is diff feis'd, and the Diss'ee releases to the 20 Diss'or, the Seigniory is not reviv'd, forth Diss'or claims under the Lord the same Estat which was in the Lord, and the Possession wa never actually removed; and the Law is the same if the Lord had been differs'd by two and the Diss'ee had releas'd to one of them But if the Lord and a Stranger diffeise th Ten't, and the Ten't release to the Strange the Seigniory is revived, for the Strang claims not under the Lord, and if the Stranger had furviv'd the Lord, the Seigni ry would have been reviv'd.

An Infant Diss'or aliens in Fee, the Ali nee dies seis'd, the Diss'ee releases to t Heir of the Alienee, the Entry of the Infa is still lawful, yet if he bring a Writ Right against the Heir of the Alienee, and t Mise be join'd on the meer Right, the He ought to have a Verdict, for the Right of t Diss'ee passed to him by the Release; and the a Release by him whose Entry is not laws is faid to enure by Way of Extinguishmen yet the Releasee may take Advantage of for if he be seis'd of the Land in Fee, t Whole passes to him, and if he be Ten't

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only, he shall have the Benefit of it during his Life, tho' the Whole pass not to him; but in all such Cases the Right of him that made the Release is wholly extinguish'd as to himself.

Ten't in T. with the Rem'r in Fee to A. dies without Issue, B. intrudes, A. recovers in Formedon by Default, and makes a Feosiment to C. B. reverses the Recovery in a Writ of Deceit, C. shall never have a Writ of Right, for the Recovery being reversed all Estates subsequent to it are deseated, and B, is restored to the Land in such Plight as if there had been no Recovery at all, and the Feossee can't maintain an Action on the naked Right of his Feossor.

4. Some Releases enure by Way of Extinguishment as to the Releasor only, and as to others by Way of Mitter le Droit, as where one whose Entry is not lawful releases to the Ten't, or a Diss'ee releases to a Lessee L. or a joint Feostee of a Diss'or: But where the Release can't have the Thing releas'd, a Release shall enure by Way of Extinguishment against all manner of Persons; as when the Lord releases his Seigniory to his Ten't of the Land, or when the Grantee of a Rent Charge or Common releases to the Ten't.

Such Releases absolutely extinguish the Rent, & c. tho' the Release be but Ten't for L. And they may be made to one whose Estate is suspended, as if a Feme Mesne marry her Ten't, and the Lord release to the Feme, the Seigniory is extinct; but if he release to the

280.

21 Co. L. 305. b. 152. b.

362.

the Husband, both the Seigniory and Mefnalty are extinct.

If the Lord release all his Right in the Seigniory, or all his Right in the Land, the Seigniory is extinct without any Words of Inheritance.

But the Lord may release his Seigniory in T. or for L. or Y. & fic de Cereris: but a Vid. supra, bare Right can't be so releas'd, for if it be releas'd for an Hour it is gone for ever.

> If the Tenancy be given to the Lord and a Stranger, and the Heirs of the Stranger, the Lord releases all his Right to his Companion; this not only passes his Estate in the Tenancy, but also extinguishes his Right in the Seigniory.

> The Lord grant his Seigniory for Years, the Ten't attorns, the Lord releases to the Grantee T. and to the Ten't of the Land generally, this extinguishes the Seigniory, and the State of Grantee Y. also, for as to the Ten't of the Land it enures by Way of Extinguithment of the Seigniory, which requires no Words of Inheritance, but the Estate of the Grantee Y. in the Seigniory can

lar Estate in the Seigniory, the Fee being extinct, for the Seigniory Paramount of an Estate Rep. 134. In Fee cannot issue one of and be supported by a Mefnalty of a smaller Estate.

be enlarg'd but for L. without apt Words of

Inheritance, and therefore it shall be ex-

tinct, because there can't remain a particu-

But if the Release had been to them, and their Heirs, it had given the Grantee a Fee in one Moiety, and extinguish'd the other.

Littleton

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Littleton proves that in the Case aforesaid the grand Affise ought to pass for the Heir of the Alienee, from the Cafe of him that had a Rem'r in Fee expectant on a State L. at Common Law, for before Westm. 2. 3. if Ten't L. had loft by Default in a feign'd Action, and died, he in Rem'r had no Remedy. But if he had diffeis'd Ten't L. before fuch Recovery, and then Ten't L. had re-entred, and loft by Default, he might have had a Writ of Right against the Recorerer, for the the Selfin which he gained was defeated by the Re-entry of the Ten't L as to Ten't L. yet it was a good Ground of a Writ of Right against the Recoverer, who was a Stranger. And tho' the Mife be join'd in this Manner, whether the Ten't have more Right as he holds, than the Demandant in the Manner as he demands, and the Seisin of the Demandant were deleated, to that he has no Right in the Manner is he demands, yet he ought to recover, for these Words modo & forma are meer Form, when the Isue is join'd, on the Point of the Action, as in this Cafe, or when a Demendant in Cafu Proviso counts of an Afremtion in Fee, and the Ten't fays, that he did not alien Modo & Forma, Oc. and the Jury hads an Alienation in Tail, for the Point of the Writ is whether the Ten't in Dower alien'd to the Disherison of the Demandant.

But when the Issue is on a collateral Point, Modo & Form are material, as when a Feoffment is alledged by two, of by Deed, the Jury can't find a Feoffment by leton one, or without Deed, for perhaps the other

might :

266.

might be induc'd to join Issue on the Conveyance alledg'd, because he knew that there was none

fuch.

If Land be let to A. for L. Rem'r to B. for L. Rem'r to A's Heirs, A. dies, B. enters and dies, a Stranger intrudes, A.'s Heir shall have a Writ of Right of A.'s Seisin as Vid. supra, Ten't L. A. and B. are Jointen'ts L. Rem's to A.'s Heirs, A. dies, B. dies, A.'s Heir shall

have a Writ of Right of A.'s Seisin. Done in T. dies without Iffue, Rem'r Man enters, Donee's Wife has a Child who enters, and dies without Issue, Rem'r Man shall have a Writ of Right of the Seisin which he had So if Land be giv'n to A. in T. Rem'r to him in Fee, he dies without Issue, his collaten Heir shall have a Writ of Right, tho' the Fe were not executed.

Tho' the Issue be on a collateral Point yet if by finding of Part of it it shall appear to the Court that the Plaintiff had no Caul of fuch Action, modo & forma are but Form as if in Trespass the Defendant plead that the Plaintiff holds of him by Fealty and Rent, and that for Rent he distrain'd; and the other deny that he holds of him mod of forma, and the lury find that he holds of him by Fealty only, the Writ shall abate for let the Tenure be of what Nature foever the Ten't can't have Trespass against hi Lord.

Marlbr. 3.

If the Matter of the Issue be found, it i 282. fufficient; as when on an Indictment of Murder, the Defendant is found guilty of Manslaughter, for the Killing is the Sub stance. So in Assife of Darrein Presentment

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if the Plaintiff alledge the Avoidance by Privation, and the Jury find it by Death; or in Assise by the Guardian of a Hospital against the Ordinary, if he plead that he deprived him in his Visitation as Ordinary, whereon they are at Issue, and it be found that he deprived him as Patron; or in Debt on a Bond to perform a Covenant of not cutting down Trees, if a Breach be assigned in cutting 20, and the Jury find 10, it is sufficient.

Also in a Writ of Trespass for Goods carry'd away, or Battery, or false Imprisonment, if the Defendant plead that he is not guilty in the manner as the Plaintiff upposes, and it be found that he is guilty at another Day, or in another Town or County than the Plaintiff supposes, yet he shall recover; for in transitory Actions the Defendant shall not traverse the County or Town where the Fact is laid, without some special Cause of Justification which is so local that it can't be alledg'd in another Place; as where a Constable of a Town manother County arrests a Man for a Breach of the Peace; in which Case, if an Action be brought against him, he shall traverse the County, and all other Places, faving the Town whereof he is Constable; fo where the Defendant justifies for Damage Fefant. In an Action of Slander laid in London, the Defendant pleaded a Concord for Words in all other Counties except London, and travers'd the speaking there; the Plaintiff denied the Concord, the Defendant demurr'd, and the Plaintiff had Judgment: For in this Cale Case the Gourt allow'd a Traverse on a Traverse, lest by such an Invention this ancien Principle shou'd be subverted, that the Placawhere a transitory Action is laid shall not be traversable.

283.

In Trespass if the Fact were not committed, the Defendant ought to plead not guilty; but if the Fact were committed, and he have Caufe of Justification and Excuse, he must confess the Fact, and plead the special Matter, but if he plead not guilty, he cannot give the special Matter in Evidence; and the End of the Law in requiring such Exactness in Pleadings (which, being drawn by Men learned in the Law, it is to be presumed will not be mistaken,) is, that the Matter which is truly in question between the Parties, should only be put in Issue, for otherwise a Cause might be lost by the Party's not being able to prove that in Court; which out of Court is known to all the World, and both Parties will be put to an unnecessary Charge: Therefore in Trespass, quare Clausum, &c. on Not guilty pleaded the Defendant can't give in Evidence that they came through the Plaintiff's Hedge which he ought to keep in Repair. In Detinue, the Defendant on Non detinet pleaded, can't give in Evidence that the Goods were pawn'd for Money yet. unpaid, but he may give in Evidence a Gift for the Plaintiff, for that proves that he detains not the Plaintiff's Goods. In Walte on null Wast pleaded, he may give in Evidence Lightning, Enemies, Oe. but not justihable Waste, as that he cut down Trees to repair the House, &c. If two be jointly bound, and one be fued alone, he may plead this factumini)
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this in Abatement, but can't plead non est sectium. If an Executor plead Plenement administer, and issure riens inter mains, if it be prov'd that he has Goods in his Hands which were the Testator's, he may give in Evidence that he has paid to the Value of his own Money, for thereby the Goods which he had as Executor become his own proper Goods. In an Assise, the Ten't on Null tore wall Dissessin pleaded can't give in Evidence a Release after the Dissessin, but a Release before he may, for he could not dissesse him whose Right he had by the Release. Collateral Warranty can't be giv'n in Evidence, when the Mise is join'd on the meer Right.

Where a Man can't take Advantage of the special Matter in Pleading, he shall give it in Evidence; therefore because one can't justify killing, he shall give in Evidence that it was se desendendo, or in Desence of his

House against Thieves, O'c.

By 7 fac. 1. 5. In Actions on the Case, Irelpass, Battery, or false Imprisonment against a Justice of Peace, Mayor, or Bailist of a Corporation, High or Petty-Constable, for any Thing done in their Offices they shall plead Not guilty, and give in Evidence the special Matter: So by 21 J. 1. 4. may the Defendant in an Information on Penal Statutes, except Reconsancy and Champerty, and generally instate Statutes there is a Clause, that where a Man is sued for executing the Powers contained in them, he may plead Not guilty, and give the special Matter in Evidence.

284.

285.

If Diss'ee enter on Diss'or's Heir, and the Heir bring an Assis, he shall recover; but if he bring a Writ of Right, he shall be barr'd; and if he recover in Assis against the Diss'ee, yet the Diss'ee may have a Writ of Entry en le per against him, and recover.

A. dies seis'd, the Land descends to B. C. abates and dies seis'd, B. enters, C.'s Heir recovers in Assis against B. B. may have Mordancester against C.'s Heir; and if A. had been disses'd, B. as Heir to him should have

had a Writ of Entry en le per.

Tho' the Vouchee having enter'd into Warranty, or a Ten't to a Pracipe having aliened the Land, may take a Release from the Demandant; yet if a collateral Ancestor of the Demandant release to them with Warranty, they can't plead this against the Demandant; for the Release by a Stranger is void, because they are Ten'ts in Law only as to the answering the Action of the Demandant, but not as to other Purposes.

A Release of Actions Real is a good Bain Actions mix'd, as Assis of Novel Disin Waste, Quare Impedit, (a) Annuity, and so

SirW. Jones, a Release of Actions Personal.

Action est in prosequendi quant

Actio est jus prosequendi quod sibi debeturia Judicio, or Action n'est auter chose que loya

demand de son droit.

By a Release of Actions, Causes of Actions are released; but in Submission of all Actions to Arbitrement, Causes of Actions are no contained; because nothing shall be intended to be referred to Arbitration, but Matters then in Controversy between them.

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A Man can't by his own Act alter the Nature of his Action, as if Lessee do Waste, and then surrender to his Lessor, or the Lessor release to him all Actions Real, the Lessor can't have an Action of Waste for the Damages only: Yet after a Term for Years is expir'd, or a Lease pur autre vie is determin'd by the Death of cesturque vie, Lessor may have an Action of Waste for the Dama-

ges only.

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When Part of an Action determines by Act of God, and the like Action lies for the Relidue, the Writ shall not abate, as Waste and Ejectment, because they lie for Damages only, shall proceed, tho' the Lease determine hanging the Action; but a Writ of Waste shall abate, if the Inheritance determine hanging the Action, for the Disherifon of the Plaintiff is the Ground of the Action: So if Ten't pur auter vie bring an Affife, and hanging the Action ceftuque vie die, the Writ shall abate, for an Assife lies not for Damages only: So if a Writ of Annuity be brought, and hanging the Action, the Annuity determine, the Writ shall abate, because it lies not for the Arrearages only: But if a Writ of Conspiracy be brought against two, and one of them die, it shall not abate, (notwithstanding the like Action lies not against the Survivor, because the Tort, which is the Ground of the Action, is not lessened by the Death of one of the Defendants. In an Affise by two, a Release of Actions Personal made by one of them, bars himself only, because such Action is partly Real; Et omne majus trahit ad se minus. In

286.

In Real Actions, wherein Damages an not recoverable at Law, as Mortdancester Dower, Entry Sur Dissin, Oc. a Release of Actions Personal is no Bar; because the De-

Co. I. 10c. mandant may waive the Benefit of the Statutes 1 Lev. 32. and bring his Action at Law for the Land only

If an Affile of Novel Disin be arraign'd against the Diss'or and Ten't, the Diss'or may plead a Release of Actions Personal but not of Real, for none can plead fuch a Release in an Affise but the Ten't. the Ten't in Affife may plead a Release of Actions Personal to the Diss'or, because the Diss'ee can't recover the Land in an Assile against the Ten't, without recovering Damages against the Diss'or. But he can't plead a Releafe of Actions Real made to the Disson, because the Assise is meerly Personal as to him.

He in Rem'r shall not after the Death of Ten't L. plead a Release of Actions made to the Ten't L. neither shall the furviving Feoffee of the Heir of the Diss'or plead fuch a Release made to his Companion; nor shall the Diss'or plead such a Release made by the

Diss'ee against his Heir.

He that has Right of Entry may enter, tho' he have releas'd all Actions; fo if one take my Goods, or detain them, I may take them out of his Possession, tho' I have releas'd all Actions.

Detinue lies where one comes to Goods by Delivery or Finding: In this Action the Thing detain'd is to be recovered, therefore it must be so certain that it may be known, for which Cause Detinue lies not for Money out of a Bag, &c. But for Charters of the

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Inheritance it does if you know the Certainty of 'em, and what Land they concern, or if they be in a Bag fealed, Oc. tho' you know not the Certainty of 'em. If you declare of one in special, the Defendant shall not wage his Law, because it concerns the Realty, and for the same Cause Summons and Severance lies in fuch an Action. A Capias lies in Detinue of Goods, but not in Detinue of Charters in special, yet a Release of Actions Personal is a good Bar.

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The Statute which before the 27 H. 8. 10. enabled a Diss'ee to bring a Real Action a- 4 H. 4. 7. gainst the Diss'or, being Pernor of the Profits, after a Feoffment made by him, enabled the Diss'or by Consequence to take from him Release of Actions Real, and yet he had neither jus in re, nor ad rem, and he shou'd have Benefit of fuch Release by special Pleading, and bar the Diss'ee; and the Diss'ee might enter, because the Ten't acknowledg'd himselfa Disor. In Dower the Ten't pleads that A. was feis'd before the Writ purchas'd, till he was by the Ten't differs'd, and that langing the Writ A. recovered; this is a good Plea in Abatement, and yet the Ten't acknowledges a Difs'in in himfelf.

A Release of all Actions Real and Perfonal, is no Bar in an Appeal of Death, or Robbery; for fuch a Release bars only civil Actions, not criminal; because an Appeal in which the Appellee shall have Judgment of Death, is not properly a Personal Action, but a Release of all Actions, or Appeals is a good Bar: And a Release of Actions Personal is a good Bar of an Appeal of Maybem.

A Re-

A Release of Actions Personal is no Bar in a Writ of Error to reverse an Outlawry by Process on the Original, because by such Writ the Plaintiff shall only be restor'd to his Goods, &c. against the K. but shall recover, or be restored to, or discharged of nothing against the Party, therefore it is not properly an Action: But fuch a Release bars Error to reverse a Judgment and Outlawry after it; it likewise bars an Attaint, and And a Release of the Writ Audita querela. of Error is a Bar even in the first Case, for tho' the Plaintiff recover, or be restored to nothing by it against the Party, yet the Defendant is privy to the Record, and liable to Vexation by the Writ of Error.

Judgment of Outlawry is giv'n by the Coroners in the County in all Places but London, where the Mayor by Custom is Coroner, and Judgment of Outlawry given by the Recorder. Outlawry forseits no Goods,

Vid. supra, neither does it disable, nor does Error lie
upon it, till it appear of Record, either by
the Return of the Exigent, or Removal of
the Outlawry by Certiorari.

Recovery, all his Right, &c. He can't have Error, for he can't be restor'd to the Land.

> If one recover Debt or Damages, and release all Actions, yet may he sue Execution by Capias ad Satisfaciendum, Elegit, or Fieri Facias. Note, Two old Records, wherein an infirm old Man found guilty in an Action of Trespass, and a Woman big with Child bringing a false Appeal, were not imprisoned.

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Elegit, and Statutes are giv'n by Parliament. Elegit must be by Inquest. The Obligee can't pray, that the Extenders shall take the Land, &c. at the Rate at which they prise 'em in Elegit, but on Statute Merchant or Staple he may. No Execution on any of these Acts shall go against the Heir within Age, or if two Daughters be Heirs, and one of 'em within Age. After full and perfect Execution by Extent return'd and of Record, there cou'd be no Re-extent on any Eviction; but if the Extent be insufficient, a new one shall go out.

By 32 H. 8. 5. If Lands had and delivered in Execution, be evicted before the Debt or Damages are wholly levied, the Ten't by Execution shall have a Scire Facias, and a new Execution: But the Act says, whereby the Ten't by Execution is clearly set without Remedy, therefore if but one Acre remain not evicted, or if the Eviction be by the Conuser's Wise recovering her Dower, or by his Lessee L. or T. there can be no new Exe-

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Tho' the Act fay, till he or his Assigns shall have levy'd the whole Debt, &c. yet if there be several Assigns, all shall hold it but

till the whole be paid.

Tho' the Words be, when Land, &c. is delivered in Execution, the Act extends to any Ten't by Execution, as if a Seigniory be extended, and the Tenancy escheat, or one enter after the Liberate himself. But it reaches it not a Villein's Perquisite, for the Lord

Lord is not Ten't by Execution thereof, but

gains the whole Estate.

Executors, Administrators, and Assigns, shall have such new Execution, tho' it be not expressly giv'n to 'em. Tho' the Act say they shall have a Scire Facias out of the same Court, if the Record be removed into ano-

ther, they shall have it from that.

Tho' the Statute give it against those that were Parties to the first Execution, their Heirs, Executors or Assigns; yet there shall be no new Execution against a Purchaser or his Assigns, if the first were against him, unless they have other Land liable to it; if several Assigns have Land subject to the Execution, one Scire Facias lies against all. No new Execution can be had against the Obligor, &c. unless he were Party to the first Execution. Nor can a new Execution be had against the Purchaser's Executor, tho' he were Party to the first, for the first was had against the Purchaser only in respect of his Land purchas'd of the Debtor.

A Release of all Actions, or Executions, is a good Bar in a Scire Facias, either in Actions Real or Personal, or on a Fine; for tho a Scire Facias be a Writ of Execution, yet inasmuch as the Desendant may plead to it Matter to oust the Plaintiff of his Execution,

it may be call'd an Action.

If the Plaintist after Judgment, release all Executions or Suits, and afterwards sue Execution, the Desendant shall have an Audita querela: But if K. release all Suits, yet may he have Execution, because the Court ought

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n Officio, to award Execution for him withut any Suit, but not for a Subject.

After Execution fued, if Plaintiff release #Debts, or Duties, or Judgments, or De- Vid. Supra,

mnds, an Audita querela lies.

A Release of Duties is no Bar in Account, or Duty extends only to Things certain; ut what shall on the Account appear due suncertain.

If Execution be fued on a Recognizance Elegit, and Conusee make a Deseasance, at if Conusor do such an Act the Recogmance shall be void, by this the Execution

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Demand is the largest Word in Law expt Claim, for a Release of Demands difarges all Sorts of Actions, Rights and Tis, Conditions before or after Breach, Exetions, Appeals, Rents of all Kinds, Coveints, Annuities, Contracts, Recognizances, atutes, Commons, &c.

But a Release of all Demands doth not dif- 1 Sid. 14t. urge Rent incident to a Revin due after the 1 Lev. 99. dease, and generally if it be made on a partilar Occasion, that shall restrain the Generality

the Words.

If one release omnes querelas aut loquelas, lis is as large as a Release of all Actions, d releases all Causes of Actions tho no

ut be then depending.

A Release of all Actions discharges a Bond pay Money on a Day to come, for it is bitum in prasenti quamvis sit solvendum in aro; and it is a Thing meerly in Action, the Right of Action is in him that reales, tho' no Action lie when the Release

is made: So may an Executor release Action before he has prov'd the Will, an some say that the Ordinary may release a Action, tho' he can have none: But a R lease of Actions does not discharge a Re before the Day of Payment, for it is neith debitum nor folvendum at the Time of the R lease, nor is it meerly a Thing in Actio for it is grantable over: And the Law is t fame as to an Annuity; but the Leffor m release or acquit the Rent, &c. A Release Actions by a Covenantee to his Covenante is no Bar to an Action for a Breach of Covenant after the Release; but a Relea of Covenants discharges the Covenant felf.

The Leffor may have an Action of De for Rent after each Day of Payment, for it reserv'd for the Lessor's Maintenance in Li of the Profits; but no Action lies on a Co tract to pay Money at five several Days t all be past, for there is but one Contract, a one Debt, and consequently there can be but Action of Debt; but if a Recognizance be pay Money at five several Days, after first Day of Payment Execution lies for t Sum that then ought to be paid, for it is nature of several Judgments: And the L is the fame of fuch a Covenant, or Prom to pay Money, Gc. for as often as the Mo is not paid according to the Covenant and P mise, so often is there a Breach of the Coven or Promise, and consequently so often an All lies.

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294.

After the Mife join'd on the meer Right, the Ten't may tender half a Mark to have the Seisin inquir'd, (except when the K. is Demandant,) and if the Seifin be not found in the Time of the K. whereof the Demandant counts, he shall be finally barr'd: If it be found for him, the Jury shall enquire over.

The Oath of the Jury in Writ of Right is, I will truly fay whether A. B. has more meer Right to hold the Tenements which C.D. demands against him by his Writ of Right, or C. D. to have 'em as he de-

mands, &c. So help me God.

N. B. This Oath is absolute without faying to their Knowledge, for Judgment final s to be giv'n, as in Attaint and Law Wager.

The terrible Judgment in Attaint is mitipated by the 23 H. 8. 3. Tho the Words are, that the Party griev'd shall have it against the Party that shall have Judgment on the Verdict, yet it lies against his Executors: The K. (a) may have an Attaint for a false (a) Bro. 15. Verdict in a Civil Action brought by him; but' an Information, (b) Qui tam, &c. neither (b) Bro.127. the K. nor Informer are fully Parties, and

berefore neither of them can have an Attaint: (c) But the Defendant in such a Suit shall have (c) Bro.130. n Attaint, tho' it lie not where the K. is sole

Party. No Connusance shall be granted in Ataint, because the Statute says expresly that Il Attaints shall be brought in one of the

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The Defendant in some Cases may wage his Law, i. e. swear that he owes not the Debt demanded, nor any Penny thereof; and this is a perpetual Bar to the Plaintiff. He that does it, ought to bring with him in Persons that shall avow on their Oaths, that

they think he swears true.

It lies in some Cases in Debt, Detinue and Account; it lies for a Feme Covert, to gether with her Husband; for an Alien in the Language he can speak; in Debt on Arbitrement, or Detinue on Bailment by another's Hand, for the Debet or Detinet is the Ground of those Actions, and the Contract of Bailment is but the Conveyance, and not traversable; it also lies for an American a Court-Baron; for the Successor of an Ab

bot, because the House never dies.

But it lies not in Actions grounded on Specialty; nor for one infamous; nor when the Plaintiff or Defendant is an Infant; no where the Suit is for K. or his Benefit, as quo minus, or Actions wherein a Contemp or Trespass is suppos'd in the Defendant, it which if the Defendant be found guilty, he sha be fin'd; nor in Actions grounded on the Defendant's Breach of Promise, or a Tor done by him; for the Law will not trust bi Honesty in discharge of such Astions which ar grounded on a Supposition of his Injustice; no does it lie in Actions which are not grounded of what was transacted meerly between the Plainti and Defendant, but on the Act of another Per Jon, as in an Account against a Receiver of a Receipt per autre mains, where the Receip gd he

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is the Ground of the Action, and traversable, but it would have lain if the Receipt had been by the Hands of his Wife, or of one of his Monks; for fuch a Receipt is all one in Effect as a Receipt by the Defendant's own Hands, in Respect of the Privity between them : Nor does it lie in an Action founding in the Realty, as Account against a Bailiff, or Debt for Rent, or Detinue of an Indenture of a Leafe, orc. Nor for a Debt of Record, as Arin Amercement in a Court-Leet; nor does the Auditors, nor in Debt against the Lord bund in Surplusage on such Account, by tra- Construction of W. 2. Nor in Debt by a Ab the Prisoner; nor in an Action by an At-tuney for his Fees, or by a Labourer retain'd on a scording to the Statute for his Wages, bewhere sufe the first is compellable to be the Parnot by's Attorney, and the other to be his Serassistant; nor in an Action on a Penal Statute,
employed for an Executor or Administrator. it, 11

## Of Confirmation.

Onfirmation is a Conveyance of an Estate or Right in Esse, by which a voidable ch ar hate is made fure, or a particular Ellate meas'd: But it Arengthens not a void

ded of thate, nor does it enlarge without Privity lainty more than a Release.

The a Release by a Lessor L. to the Lessee ver of his Lessee, or by a Dissee to the Lessee Receip of his Dissor, be void; yet in both Cases

a Confirmation is good : But a bare interesse termini can't be confirm'd.

Moor 67.

Leffee L. makes a Leafe for 30 T. and after makes another for 60 %. and Leffor confirms the 2d, and then confirms the first Lesee L. dies within the 30 T. Lesee for 60 T may enter.

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If the Estate of Ten't in Fee, T. or L. be confirm'd for a Day or an Hour, it is good for ever ; and herein a Release and Confir mation agree. And if the Estate or Demise or Term of Leffee ?. be confirmed for a Day it is good for the whole, for the Addition of Parcel is repugnant, when all was con firmed before. But the Land may be con firm'd to Leffee Y. for Parcel of the Year for the Years are feveral, but a State of Free hold is entire, and can't be confirm'd for Part of the State.

A Diss'ee, or Patron and Ordinary, ma confirm a Lease Y. for Part in respect of the Right or Interest: Yet an Attornment which is a bare Affent, can't be for Part, on Condition.

A Release of a Rent, Right, or Condition to Lessee L. enures to him in Rem'r Rev'n; yet a Confirmation of a State does not, whether the particular Estate at Rem'r or Rev'n be in the same Person or d verse. But the Confirmation of the Esta of one lointen't enures to both: And it Leale be made to A. and B. Rem'r to A Heirs, the Confirmation of B.'s Estate co firms the Fee, for to many Purposes he h be by the whole Fee in him. A Feme Dis ma

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nd if

makes a Feoffment to the Use of A. for L. Rem'r to her felf in T. Oc. and marries the Disee, who releases to A. this perfects his Wife's Rem'r; for tho' a Man can't contract with his Wife, or transfer any Interest to her, yet the may by Construction of Law take Benefit of his Release made to a third Person, and enuring by way of Extinguishment. But if Lessee L. make Lease L. Rem'r to his Lessor, who releases to the 2d Leffee, he can't by this Release perfect his own defeasible Estate, but after ad Lessee's Death he shall be in his old Elfate.

But a Confirmation and Release agree in his, that either of em made to him in Rem'r, or Rev'n, enure to the Benefit of the particular Estate, whether they be made by Disleifee or Feoffor on Condition, for they annot enter, but in respect of their Right or Tule to their ancient Estates, which they cannot revest without devesting the particular Estate, which against their own Deed they hall not do. If Ten't T. discontinue, and Discontinuee make a Lease L. and grant the Rev'n to the Issue, now the Issue thall not have a Formedon, for by that he must recoter an Inheritance; but the Lessee hath not he Inheritance, but the Issue in T. himself has it.

If Diss'or make a Lease L. and levy a fine of the Rev'n, and five Years pass, the he he by defeasible Title, and the Rem'r by cod Title, the defeating that defeats not

this; as if Leffor L. diffeise Leffee, and make a Leafe for L. of the first Leffee, Rem'r to C and the first Leffee enter, he leaves the Rem's in C. for the first Lessee shall regain no more than the Estate whereof he was disseis'd; nor shall the Lessor's Estate be revested in him against his own Conveyance. And in many Cafe a Rem's once well vetted, may subfift the the particular Estate cease. As if a Lease ? be made to an Infant, Rem'r in Fee, and the Infant disagree at full Age: Or if a Lease be made to A. for B.'s Life, Rem'r to C. A. dies, Vid. supra, before the Occupant enters there is no particular Estate, yet the Remainder continues. So if a Rent be granted to the Ten't of the Land for L. Rem'r in Fee, this Rem'r is good; for in Judgment of Law the particular Estate vested for an Instant in the Ten't L tho it were afterwards immediately suspen-A Rent is granted to A. for B.'s L

403.

the Contingency happen in the same Instant Vide 3 Lev. but a Rem'r which is to commence on a futur Contingency, falls to the Ground if the particular Estate which supports it determine before th Contingency happens: But by 10 & 11 W. 3. 16 where an Estate is limited to one for L. will a Rem'r to his Son or Daughter, &c. they may take tho' they be born after their Father's Death.

Rem'r to B.'s Heirs, this Rem'r is good; ye the particular Estate must determine, and

A Release by a Diss'ee to one of his Dis feifors, enures to him alone; but if the Effat of one be confirmed without faying more,h shall not hold his Companion out, because nothing was confirm'd but his Estate which was joint: But if these Words be added, To

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hic. To have have and to hold the Land to him and his Heirs, he thall hold out the other. If the Diffeise and A. diffeise the Diss'or's Heir, or the Grantee of Rent and A. differse the Tent, and Diss'ee or Grantee confirm the Estate of A yet in neither Case doth this extend to pass or extinguish the Right or Rent sufpended, as a Release doth. It is said, that if one Jointenant confirm the Estate of the other, that it remains Joint; but if he add, to have and to hold the Land to him and his Heirs, the other shall have a sole Estate. And if Leffor confirm the Estate of his Lefse, to hold his Estate in Fee, he passes nothing, for an Estate L. can't be an Inheritince; but if he confirm the Estate by these Words, to have the Land to him and his Heir, he gives the Fee, for the Habendum and Premisses agree in Substance, and the Habendum may enlarge, tho' it can't abridge the Premiffes.

A Release and Confirmation agree in this, that either of 'em made by a Lessor L. to the Husband of a Feme Lessee and the Wise, haddend' for Term of their Lives, give the Husband an Estate by Way of Rem'r, or Increase of his Estate, for Term of his L. after her Death. If the Confirmation had been to 'em in Fee, it had given them the Fee jointly, and he had been seis'd in her Right for her Lise. And if a Lease be made to Husband and Wise, habendum one Moiety to him for L. the other to her for L. and then the Lessor confirm the Estate of both, habend to them and their Heirs, this gives 'em a joint Fee in the Wise's Moiety, and the

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Husband a fole Fee in his own, for the Husband's Estate in the Wife's Right in the one Moiety is as capable of a Confirmation as his own Estate in the other. A Confirmation of the State of two Lessees in Common, or joint Donees, Habend in Fee, gives them a Fee in Common, for it enures according to the Quality of the State enlarg'd

A. is Ten't L. with a Rem'r to B. for L Lessor confirms the Estate of both habend to them and their Heirs, A. is Ten't L. for one Moiety, Rem'r to B. for L. Rem'r to A. in Fee; of the other A. is Ten't L. Rem'r to B. in Fee, for B.'s Rem'r of the Fee in the

Moiety drowns his particular Estate.

In the Case above, where the Husband has a Rem'r for L. and the Wife is Ten't L. or where a Lease L. is made to A. Rem'r to him for Life of C. if the Husband or A. commit Waste, an Action of Waste lies, for the intermediate Rem'r L. in the same Person that does the Wrong, shall not make it difpunishable.

If one make a Lease r. to a Feme Sole, who marries, and then the Leffor confirm the State of the Husband and the Wife, habend' the Land for Term of their two Lives, this gives 'em a joint Freehold, for they had none before, and tho' the Wife's Freehold be not in the Husband's Disposal, a Lease

T. is.

It is faid that whatever I may defeat by my Entry, I may make good by my Confirmation; therefore if a Feoffor on Condition confirm a Grant of Rent by the Feoffee, or a Diss'ee confirm a Grant by the Diss'or or his

his Heir, the Rent remains after Re-entry or Recovery, whether the Entry were lawal when the confirmation was made or not: But in all these Cases a Release would be void.

At Law, if the Patron and Ordinary, or he Patron alone of a Chapel Donative, had confirm'd a Grant of a Rent made by a Parson or Chaplain, or licensed them to make uch Grant, it remain'd effectual according othe Purport of it. Persona Impersonata is he Incumbent of a Church Parochial, in shofe Person the Church may sue for and

lefend her Right.

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The Ordinary alone may confirm withthe Confent of Dean and Chapter, but when he same Person is Patron and Ordinary, is Confirmation can't make it good after he Decease of the Incumbent, but only from the laring his own Life, unless Dean and Chapter agree. For the Advowson is Part the Possessions of the Bishoprick, the Vawho we whereof can't be lessened by the Bishop without their Consent.

If one he Patron of the Church of B. as

If one be Patron of the Church of B. as: arion of C. his Confirmation of the Grant fa Rent out of B. without his Patron's Ment can't make it perpetual, no more han that of Ten't L. If the Estate of the Paon that confirms a Grant be conditional, nd then the Condition be broken, the Con-

A Confirmation by Ten't T. remains good my during his Life, and that of the Successors that come in by him; but if the Entail his barr'd, it is good for ever; if it be dif-

301.

continu'd, it is good during the Disconti nuance.

In all Cases the Confirmation must be during the Life of the Incumbent that made the Grant, for after his Death it is ab

folutely void.

No fole Corporation could ever make a absolute Alienation without the Consent of fome other, but all Corporations Aggregat of many Persons capable, as Dean an Chapter, &c. or the Head of a Corporation Aggregate of many Persons dead in Law as an Abbot or Prior with the Confent the Covent, might make an absolute Alie nation; fo might a Bishop with a Confi mation of the Chapter; and if there we two Chapters with the Confirmation of both and if one of them were diffolv'd with the Confirmation of the other, but the Con fent of the Founder or Patron was not re quir'd.

If a Diss'or make a Deed of Feoffmen and a Letter of Attorney to deliver Seisin ! A. and the Diffeisee confirm the Estate of or the Deed made to A. this is clearly voi But if a Bishop had made a Deed of Feet ment, and Letter of Attorney, or a Chart to K. and before Livery or Inrollment the Chapter had confirm'd the Deed or Chap ter, this was good, for the Affent is full

cient.

If Ten't L. whether on Condition or al solute, grant a Rent in Fee, a Confirma tion by Leffor makes it effectual, (and y by Law it was determinable by Death

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Ten't L.) because the Grant was in Fee. But if the Grant be to the Grantce and his Heirs by express Words for the Grantor's Life, and Lessor confirm it, it shall deter-

mine by the Death of the Grantor.

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Dedi & Concessi are general Words, and may amount to a Grant, Feoffment, Gift, Release, Confirmation, Surrender, &c. therefore if a Diss'ee by Deed dat wel concedir the Land to the Difs'or, this amounts to a Confirmation; or if a Leffor make a Deed with fuch Words to the Leffee, it gives him an Estate L. T. or in Fee, according to the Purport of it; and if he make a Deed to him in these Words, voluit quod baberet Terram pro termino Vita, he enlarges his Estate for Term of L. and there are many other Words, as Dimifi, Oc. which one may use in Confirmation.

But a Release, Confirmation, or Surrender, Oc. can't amount to a Grant, Oc. nor Surrender to a Confirmation or Release, for these are peculiar Conveyances destin'd

to a special End.

If the Parson and Ordinary make a Lease Tof the Glebe to the Patron, or a Diss'or grant a Rent to the Diss'ee, or make a Lease L. Rem'r to the Diss'ee; in all these Cases, if the Patron or Difs'te respectively grant over the Term or Rent, or Rem'r, such Deed amounts to a Grant and Confirmation, for they can't avoid their own Grants.

If the Diss'ee and Diss'or's Heir join in a feofiment by Deed, this is the Feofiment of the Heir, and Confirmation of the Diss'ee, for the Land ever passes from him that hath

303.

the State in him; so where Cestuyque Use, and the Feossees join'd in a Feossement after the 1 R. 3. it was the Feossees; but if the Diss'or and Diss'ee join in a Deed of Feosseent, and enter, and make Livery, it is the Feosseent of the Diss'ee.

and Confirmation of the Diss'or.

If Ten't L. and he in Rem'r or Rev'n in Fee join in Feoffment by Deed, the Freehold moves from Ten't L. the Fee from the other: If at Law they had join'd in a Parol Feoffment, the Whole moved from him that had the Fee, and it is faid that it shall be construed a Surrender of Ten't L. for in the sire Case the Freehold shall pass from Ten't L. and the Deed of Feoffment shall amount to a Grant of the Rev'n, but a Rev'n can't pass by Parol, therefore in the 2d Case, the Law will construct the Fee to be executed in the Lesson, by an imply'd Surrender of the State L.

If Ten't L. and he in Rem'r in T. join in Rep. 76. a Fine, this is no Discontinuance, for the Grant of the Rem'r in Judgment of Law precedes the Grant of the particular Estate But if Ten't L. and he in Rem'r L. join in a Feossment, both forseit their Estates, no shall it be construed the Feossment of Ten't L. and Consignation of the Rem'r Man.

In good Order you must plead, 1. To the Jurisdiction. 2. To the Person; sur of the Plaintiss, then of the Desendant 3. To the Count. 4. To the Writ 5. To the Action. And if any of these are misordered, the Benefit of the sormer is lost.

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The Count must be conformable to the Writ, the Bar to the Count, &c. and the Judgment to the Count, and none narrower or broader than the other.

It is sufficient in Bars to have a Certainty to a common Intent, i. e. That it be fo certain that, generally speaking, if it be true, the Plaintiff can have no Cause of Action, as in Trespass it is a good Bar that the Land is the Defendant's Freehold, and yet it may be that be has leas'd it for Y. to the Plaintiff, &c. Bus in Indictments, Counts, Replications, &c. a greater Certainty is requir'd, which is all'd a Certainty to a certain Intent in General; for if without a violent Construction of the Words of the Record they may be true, and ut the Defendant not guilty, the Law will not condemn him, as if one be Indicted for coining Alchymy adinifar Pecunia Regis, without bening what Money. But in Estoppels, which are odious, because they conclude a Man from alledging the Truth, there must be a Certainty to every Particular, and therefore Exceptions may be taken against them which are so nice, that they will not be allow'd in any other Cafe.

A Plea in Abatement of the Writ, or after the latter Continuance, ought to be

. To pleaded certainly.

firf The Ancient Forms of Pleading are to be dant observ'd, therefore in Counts it is sufficient Writ to say cum J. S. Seisitus, Gc. Dimisit, or se at Dedit, without expressly saying that he was her i seis'd, and did demise, (yet the Plaintiff, if he will, may fay fo,) but in Bars, Replications, cations, and other Pleas, a Seisin must be al-

ledg'd in Donor or Leffer.

Counts and Avowries (because they are in the Nature of Counts) need not to be averred, but all other Pleas in the Affirmative must be averred, but those in the Negative ought not.

Matter of Inducement, which is only alledg'd in order to bring in the principal Matter, needs not to be so certainly alledg'd

as Matter of Substance.

All Pleas must be alledged directly, and not by Way of Rehearfal, nor is it sufficient that what ought to be expressly pleaded may be deduced by Argument from what is

pleaded.

When a Record is the Ground of the Suit, or of the Substance of the Plea, it must be certainly alledg'd; but Sentences in Courts Ecclesiastical may be alledg'd Summarily, as that a Divorce was betwixt such Parties for such a Cause, and before such a Judge, & concurrentibus his que in jure requiruntur. For it is to no Purpose to alledge them particularly, because the Forms of those Courts are different from those of Common Landard our Judges presume that they are observed by the Judges of those Courts, but the Judge must be nam'd, that the Court may writt to him.

It may be generally alledged that f. s was seis'd in Fee-Simple, but the Commencement of particular Estates must be shew'd, (because they could not originally Commence without a Conveyance which must be

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[hen'd,) unless they be alledg'd by Way of

Inducement only.

Special and substantial Matter alledg'd by either Party ought to be specially answer'd, and not pass'd over in general Pleading.

All Pleas are construed most strongly

against him that pleads 'em.

No Plea is good, whereof no Tryal can

be had.

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The Ten't before his Default sav'd may plead Pleas proving the Writ abated, (because it is Error in Fast to proceed after,) or Matter apparent in the Record, but not those which prove it only abateable, as taking Husband.

Where one is authorized to do a Thing by Common Law, Statute, Custom, Grant, or Commission, he ought to pursue the

Substance of it accordingly.

Mecessary Circumstances, as Livery and Attornment in the Plea of a Feossiment of a

Mannor, are implied.

A Defect in Count, Bar, &c. by Omifsion of some Circumstance may be sav'd by the Plea of the adverse Party, but Insufficiency of Matter cannot.

Surplusage vitiates not, unless it be con-

trariant to the Matter before.

What is apparent by necessary Collection from the Record needs not to be averr'd.

As to affirmative Covenants, one may plead generally Performance of all; but as to those in the Negative he must plead specially: Of Disjunctives, he must shew which

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which he hath perform'd; those to be done of Record must be shewn specially.

Pleas amounting to the general Issue are not to be allow'd, but the general Issue is to 2 Vent. 295. be entred. But where the Matter pleaded contains Matter of Law it may be pleaded, not withstanding it may be shewn on the general Issue.

Pleas ought to conclude properly, those to the Writ to conclude to the Writ, those in bar to the Action, Estoppels must relie on

the Estoppel.

Where a Man shews the special Circumstances of his Case, and concludes & sic he did such and such a Thing, the Conclusion waives not the special Matter, but the Generality thereof is qualify'd thereby, but regularly where the Conclusion is in the Negative, the special Matter is waiv'd, especially where it goes to the Point of the Action, for there the special Matter is alledg'd to no purpole; but in an Action on a Bond, one may plead that it was delivered to J. S. to be delivered to the Obligee on a Condition not yet performed, and so it is not his Deed, and the special Matter is not maiv'd.

Finch of Law, 419. 1 Ven. 210.

304.

A fecond Plea containing Matter subsequent to the former, and not fortifying the same, (which is called a Departure,) is vitious, as when the Ten't pleads a Descent, and the Demandant avoids it by Pleading a Ecoffment from the Ten't, and he rejoins that the Feoffment was on Condition. So it one plead Performance of Covenants, and the Plaintiff reply that he did not such an Act, Sc. and the Desendant rejoin that he offered

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offered to do it. Or if a Man in his Bar make a Title at Common Law, (as if he dead generally that a Lease T. was made to him, &c. which being generally alledg'd, shall h intended to be meant of a Leafe made good by Finch, 393. the Rules of Common Law,) and in the Rejoinder maintain it by Custom or Statute. Or if one plead a Feoffment in Bar, and maintain it by Dissin and Release, or Lease and Release; or plead a Gift in T. and maintain it by a Recovery in Value. But one may Count of a Gift T. and make it good in the Replication by a Recovery in Value, of the Lands in question by Force of a Warranty, in lies of other Lands in T. evicted from the Dones, wheneof he shall be seisd of uch Estate, as he had in the Land lost, for there can be no other Count: And he that pleads a Feoffment in Bar, may plead a Relase to his Feosfor in the Rejoinder, for it ortifies the Bar.

Tho' one may in proper Time use diverse Dilatories, yet a Plea in Bar containing souble Matter, viz. requiring several Answers, is vitious, but where there are di-Co. L. 3052 terse Desendants, each of them may plead everal Pleas; and by 4 & 5 Anne 16. one may with Leave of the Court plead diverse Matters in Bar, and on a general Issue one may live as many distinct Matters as he can in widence; they may also be found by special

lerdict.

If he that has a Seigniory, Rent or Comnon, confirm the Estate of the Ten't of the
and, yet the Charges and Services remain,
ut if he release to the Ten't he extinguishes.

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guilhes them. The Lord can't by Releafe o Confirmation reserve any new Services, by he may abridge the old, and if a Mefn confirm the State of an Abbot, that hold by certain Services, to hold of him in Frank almoine, this is good, for nothing new referv'd, but only that he holds of him ; he did before; if the Lord release part of the Services, Relief, &c. incident to the Tenur still remain, and are not discharged withou special Words; and if Lord by Kt. Service release all his Right, and all Acti ons, Services and Demands except the Te nure by Kt. Service, Wardship, Gr. remain

If Donor reserve 2 s. pro omnibus Sero

tiis: Q. If Donee shall pay Relief. It feems the Lord Paramount can't by h Release or Confirmation abridge the Se vices of Ten't Paravail for want of Privit Q. If Confirmation can abridge a Ren Charge, as it is certain a Release may.

Tho' one may detain a Villein in Grol yet he can gain no Possession of him as o his Villein, nor put the Owner out of Po fession, therefore a Confirmation of the Estate of such a Detainer is void; unle

there be Words of Grant in it, and then if enures as a Grant, not as a Confirmation.

But one may be outled of the Possession of the Custody of his Ward. And the Possession of the Possession of the Custody of his Ward. fession of a Villein regardant may be froy; gain'd by Diss'in of the Mannor, and the de whilst the Diss'ee's Entry is lawful, he may be from reseite him before he enters; and Things to we the gardant and appurtenant pass by Feossinen weren ef a Mannor, without faying cum pertinentil Th

306.

Contra Hob. 99.

307.

The Grant of a Seigniory or Rent Charge to the Ten't, enures by Way of Extinguishment, for the same Man can't be Lord and Ien't, or receive Rent out of his own Land. Such a Grant to the Ten't and a Stranger nures by Way of Extinguishment as to one Moiety, and by Way of Grant as to the other.

The Release of a Leffor Y. to his Leffee enlarges his Estate for L. but his Confirma-

tion enlarges it not at all.

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An Infant makes a Lease Y. and the Lefle grants part of the Term to another, and the Infant at full Age releases to the Grante, his Release is void for want of Privity; but if the Leffee Grant the whole Term, the

Ser less Confirmation is good in both Cases.

If a Man grant a new Rent for L. and then confirm the Estate of his Grantee in the confirmation is good in both Cases. fee, he enlarges not his Estate without a

fee, he enlarges not his Estate without a frost new Clause of Distress, because he that confirms hath no Rev'n in the Rent. But if one wis'd of a Rent in Fee grant the same for L. It may by his Release enlarge the Estate of male the Grantee.

If the Grantee of a new Rent surrender from the Grantee of a new Rent surrender in the destroys the Rent, but it seems that if a see Pol stranger destroy the Deed, the Rent is not delay throy'd thereby, tho' a Thing merely in Action and the destroy'd by the Destruction of the Deed by a see massiranger, and if the Grantee of the Rent deliverings to up the Deed to the Grantor, he does not thereby strender the Rent, but he may sue for it, if he I Vent. 297.

Mentil

309.

can get the Deed again, for a Chose in Gran must be surrender'd by Deed. for the fame Man can't

## Of Attornment.

A Ttornment is the Agreement of a Ten's to the Grant of a Seigniory, Rent Rev'n, or Rem'r, (nithout which no gran thereof could take any Effect before 4 0 Annæ 16. by which Statute Attornment i made needless.) It ought to have been in the Life of the Grantor and Grantee, and might be express'd or imply'd; express At tornment is by Words or Writing expres fing the Ten't's Agreement, as faying the he agrees, or using Words Tantamount An implied Attornment is when the Ten knowing of the Grant, pays the Rent toth Grantee, &c. but there could be no Attorn ment without Notice of the Grant express or imply'd, therefore if a Bailiff who us' to receive the Rents had purchas'd a Manno Payment to him without Notice of the Pur chase was no Attornment: So if the Lor had levy'd a Fine, and taken back a Stat in Fee, and the Ten't had continued Pay ment.

Attornment was good, the' the Thin granted were altered before Attornment as if a Rent Service became Seck by Surplu tage; and if the Grant were of two Acres and a Fine levy'd of one before Attornment yet the Ten't might attorn for the other.

If the Rev'n of three Acres were granted and Lessee attorn'd for one, or surrender one to the Grantee, this was good for all attorn

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Gran Gran torn' so if the Grant were to two, and he atforn'd to one according to the Grant, this mur'd to both; and if one died he might attorn to the Survivor. Attornment to Grantee L. enur'd to the Benefit of Rem'r Man, tho' the Ten't faid expressy that he atforn'd only to the Grant for L. for Attornment being but a bare Agreement to a Grant could neither enlarge nor diminish the Operation thereof. Attornment to Cestuyque Use was a good Attornment to the Grantee.

If a Grant were made to A. for L. Rem'r to B. in Fee, and A. had died, there could be no Attornment to B. for one can't take a present Estate in Possession by Force of such Words in a Grant which give him a Rem'r only. But if a Grant were to a Man and a Woman, and before Attornment they entermarried, the Attornment was good, tho' they did not then take by Moieties, for the Words of the us'd Grant may still have their Effect according to the Purport of it, tho' the Quality of the Gran-Pur me's Estate be different from what it would have Lor been, if the Ten't had attorn'd before Mar-State riage.

Pay If a Feme had married her Grantee before Attornment, yet might the Ten't attorn, but

Attornment, yet might the Ten't attorn, but him not if she had married another, for that would have been an imply'd Countermand of the Attorment which would then be to the acres Husband's Prejudice, and defeat his Estate for the Wise's Life gain'd by the Marriage, and if Grantor before Attornment had made a grant to another, and the Ten't had attorn'd to the 2d Grantee, he could not after all storn to the first, tho' the first Grant were in Attornment, yet might the Ten't attorn, but

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in T. the 2d for L. So if a Rev'n on a State L. were granted, and before Attornment the Estate L. were confirm'd in T. the Attornment was countermanded; fo if a Grant were made of a Rev'n on a State for 7. and before Attornment, the State of the

Leffee were confirmed for L.

Where there were two feveral Grantees. Attornment to both was void, for by the Purport of each Grant the Whole is expreshy given to the respective Grantees, and it shall not be in the Power of the Ten't to make such Grants enure by giving a Molety only to each. So if a Rev'n were granted for L. and after granted to the same Man for Y. and Ten't attorn to both Grants. Or if one Grant were made to J. Bishop of L. and his Successors. and another to him, and his Heirs, and the Ten't attorn'd to both.

If A. had granted B. Acre or W. Acre, and Ten't had attorn'd, and Grantee make his Election, the Attornment was good, for it was made to the Grant in fuch fort as the

Grant was made.

If a Man had alien'd a Mannor, which was Parcel in Demene and Parcel in Service, the Services without Attornment pass'd lent of Ten'ts W. or Copyholders which needed no Attornment.

The Attornment had Relation to fome Purposes to make the Thing granted pass from the Granter ab initio; as if the Grantee Bu were an Alien before Attornment made Denk nizen, K. should have the Thing granted, for as between the Parties it so pass'd, but large not

ot fo as to charge the Ten'ts with Arrears Rent, or for Waste in the mean Time.

If a Lord had let his Manner for L. or T. nd the Ten'ts had attorn'd, and then the Rey'n were granted, the Attornment of fuch

effee bound the Ten'ts of the Manor.

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On Grants of a Seigniory, Rent-Service, ler'n or Rem'r, he that was immediately mry to the Grantor ought to attorn; there-ore if there were Lord and Ten't, and Ten't admade a Leafe L. or Gift T. Go. or if there antifere Lord Mefine and Ten't, and the Lord if a hid granted his Seigmory, he in Rev'n in he first Case, or Mesine in the 2d, ought to our we attorn'd. If Ten't in Fee had made a lase L. Rem'r in Fee, the Ten't L. ought to ors, we attorn'd to a Grant of the Seigniory, the was Ten't as to this Intent to the lord, for during his Life the Lord shall now more him only and wet the Rem'r is and now upon him only, and yet the Rem'r is his holden mediately of the Lord, and shall the it sheat if he in Rem'r die without Heir, and the licheat shall drown the Seigniory, for Vid. 370, here can't remain a particular Estate in it: 229.

with if a Rent-Charge in Fee be granted for ser-and then he that has the Rev'n of the fis'd and purchase the Land, the Grantee shall note poy it for L. for the Rent-Charge can have no the Estate is sing out of it to which it may have ulation, but in the Case above, when an Estate

dation, but in the Case above, when an Estate ome of L only remains in a Seigniory, it can't supposes to the Seigniory paramount.

But to a Grant of a Rent-Charge, or Rent-the ist issuing out of a Freehold, the Freeholdered, the was to attorn, because the Freehold was but larged; therefore the the Diss'ee might have

312.

have attorn'd to a Grant of a Rent-Service the Dissor only could attorn to a Grant of Rent-Charge. And if the Lord had grant ed the Rent without the Homage, the Dis'd only could attorn, for it pass'd as a Rent Seck. If the Rev'n only were charged with Rent-Charge, he in Rev'n should attorn to the Grant of it. The Law remain'd as to the Difference of Attornment after the 21 H.8.16 for the' the Lord needed not avow on an Person in certain, the Privity remain'd no withflanding between him and the Ten't,

If he that had a Rent-Charge in Fee ha granted it for L. and the Ten't of the Lan had attorn'd, and then the Rev'n of the Rent-Charge were granted, the Grantee for

L. should have attorn'd alone.

There was no need of Attornment, except to Grants of Rem'rs, but where the Ten was to be subject Tenure, Attendance, of Payment of Rent to the Grantee, therefor it was not requir'd in Grants of Common

Annuities, Oc.

Attornment of the Husband bound th Wife, and where he that should attorn wa Grantee, Acceptance of the Deed was fuff cient Attornment: Therefore if there we Lord and Ten't, and the Ten't had made Lease L. to a Feme, Rem'r in Fee, and Le see L. had marry'd, and the Lord had gran ed his Seigniory to the Husband, who Right of his Wife ought to have attorned and he had accepted the Deed, this was good Attornment in Law; and tho' th Services were suspended during the Cover tur

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ture, the Husband shall have them after the Death of his Wife. If the Lord had granted the Services to the Ten't, and a Stranger, and the Ten't had accepted the Deed, this had extinguish'd the one Moiety, and rested the other in the Grantee. If the Lord had granted the Seigniory to the Wife of his Ten't, and the Ten't had accepted the Deed, this was a good Attornment; and tho' the Services were suspended during the Coverture, the Wife and her Heirs shall have the full Benefit of the Grant afterwards. If the Ten't had made a Lease L. Rem'r in fee, and the Lord had granted his Services to Ten't L. and his Heirs, this gave him a fee, (for it shall not enure by way of Extinguishment against the express Words, and Purport of the Grant,) and it shall take Effect in his Heirs by Descent, for the Inhemance of the Seigniory was in Ten't L. and the Suspension was only during his L.

Unity of Possession of Rent, &c. and of the Land out of which it issues of an Estate equally high and perdurable in both, extinguilhes the Rent, O'c. but where a Man has a greater or more perdurable Estate in the one than in the other, the Rent shall be sufpended only during the Unity of Possession, as where his Estate in the Land is conditio-

nal, or gain'd by Dissin, Oc.

If the Ten't had made a Lease L. faving the Revin, and the Lord had granted his orn'd Seigniory to the Ten't L. the Leffor ought to have attorn'd, and by fuch a Grant the the Seigniory is suspended during the Grantee's L. but his Heirs shall have it by Descent.

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And inafmuch as the Suspension is but for Part of the Estate, it is in being as to Thing concerning the Right; therefore if he in Rey'n die without Heir during the Life of the Grantee, the Rev'n shall escheat to the Grantee; but as to the Poffession, during the particular Estate, the Grantee shall have no Benefit as to have Rent, Ward, Relief, o'c nor can he grant it over, because he took i suspended, and it never was in Esse in him yet when the Lord takes a Lease of the Te nancy, he may grant over the Seigniory but when the whole Effate in the Seignion is fuspended, it is neither grantable over, no shall the Tenancy escheat.

If the Ten't had holden by diverse Servi ces, and the Lord had granted the Seigniory and the Ten't had attorn'd by paying any o the Services, this was good for the whole So if they were granted by Fine, and the Grantee had recover'd any of 'em in a Sain

Facias on the Fine.

No Attornment was ever requisite to Grant to or by K. But my Lord Coke fays that it was requir'd in K.'s Grants of Land lesso of the Dutchy of Lancaster out of the Count dition Palatine; (a) but he has been contradicted by or latter Authorities.

(a) 1 Syd. 189. I Lev. 28. 315.

Attornment to a Grant of Rent by Pay after ment of a Penny, was good, and gave: subject Seisin in Law, but Payment of Money of Revigany Thing else in the Name of Seisin of the Rent, gave both an actual Seisin to main to ha tain an Assis, and was also an Attornment by main Law, and yet what was so paid was no evice part ave

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part of the Rent, nor should it be abated out of it.

Attornment made, or Seilin of Rent given by one Jointenant binds the rest. The Heir or Assignee of the Ten't might attorn. if the Ten't had died, or made an Affignment, before he had attorn'd.

An Infant was compellable to attorn in a and juris Clamat, Oc. but he should be at no Prejudice thereby, for at full Age he might disclaim to hold of the Conusee, or

by that he held by leffer Services.

The Attornment of an Infant, or of one Deaf and Dumb by Signs, was good. But

one Non Compos could not attorn.

If a Rev'n expectant on a Lease Y. or Tenancy by Execution, &c. were granted, the freehold did not pass till the particular Ten't had attorn'd. If a Rev'n expectant on a State L. were granted, the Ten't of the land ought to have attorn'd, whether he were the Leffee himfelf, or his Assignee, for to after Assignment by Lessee L. there is no says Tenure nor Attendance betweet him and lessor, tho' the Assignment were on Con-unt dition only. But tho' Ten't in Dower ted for by Curtefy had granted over their Estates, might they have attorn'd, for Pay after the Grant of their Estates, they are averaged subject to an Action of Waste, and if the ey of Rev'n be granted by Fine, it must suppose of the main to have been brought against them, because men bey were the Ten'ts at the Time of the Note as no evied. But the Grantee of the Rev'n shall par ave Waste against the Assignee of Ten't in Dower

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Dower

Dower or by Curtefy only, and must rehearse the Statute, which proves that he could not have Prohibition of Walte at Common Law, therefore it is faid that the Attornment of the Assignee was sufficient.

A Rev'n or Rem'r expectant on a State T. could not pais by Grant without Attornment of Ten't T. but Ten't T. could not be compell'd to attorn in a quid juris Clamat, nor could Ten't T. apres, but his Affignee might, and even Ten't in T. should be compell'd to attorn in a per que Servitia. or quem redditum Reddit.

If a Lease T. were made, Rem'r L. the Attornment of Lessee, or Rem'r Man to a

Grant of the Rev'n bound the other.

Rent passes impliedly by a Grant of the Rev'n, non e converso. If one had made a Lease L. and after had confirmed the Estate of the Leffee, Rem'r to a Stranger in Fee and the Lessee had accepted the Deed, this was a good Attornment, and he in Rem'r shall have Waste, if he can shew the Deed; but being privy in Estate he must shew it, and yet he has no Reinedy for it during the Lef fee's L. and when the Rem'r is executed he need not fhew it; for this Cause it is the best Way to have the Confirmation in this Case by Indentures, and to deliver one par to him to whom the Rem'r is limited.

If Jointenants had join'd in a Leafe, and after one had released to all the rest, or to one of 'em only, no Attornment was need ful in Respect of the Privity between th Lessee, and all the Jointenants by accepting em all for his Lessors; but if one Jointe

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nant only had made a Lease r. and then had released to the other, the Attornment of the Leffee was requisite.

If one had made a Lease L. Rem'r L. no Attornment was needful to his Release to

him in Rem'r.

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If the Grant were defeafible, the Ten't was not compellable to attorn in a quid furis, Oc. sif a Fine were levied of a Rev'n holden in Capite without Licence, for the K. might seise the Rev'n, and Rent. So if an Infant had levied a Fine, or Ten't in ancient Demesne had levied a Fine at Law, or Ten't in T. had levied a Fine before 4 H. 7. 24. or

my Ten't had alien'd in Mortmain.

If Leffor L. or Y. had differs'd or oufted his Leslee, and made a Feostment in Fee, and Lessee had re-enter'd, this was a good Atfornment, and it feems that the Law is the same if he recover in Affife, for there is no Default in the Feoffee, and there is no Reason that the Feoffor should have his Rev'n again gainst his own express Grant, which pass'd the Ecoffor's Right to the Rev'n inclusively in the Feoffment, and it would be a hard Construction to leave a naked Rev'n in the Feoffee without any Remedy to recover the Rent, &c. incident thereto. By fuch Re-entry the Rent referv'd on the Lease is reviv'd, because incident to the Rev'n, but if he that has a Rent in Fee, diffeise the Ten't, and make such Feoffment, it never revives.

If there be two Leffees, a Re-entry by one has the same Effect, as a Re-entry by both. Lessor L. grants the Rev'n for Life, the Lessee attorns, and then the Lessor disleises the T 3

Leffee, and makes a Feoffment, Leffee reenters, this leaves the Rev'n in the Grantee L. and another in the Feoffee, but was no Attornment of the Grantee for L. of the Rev'n, because he did no Act. Sed Q. for if this should not amount to an Attornment, the same Inconveniencies seem to follow as in the Case above of the Lessee L. recovering against the Feoffee of his Leffor, who tho' he never so much disagrees to the Act of his Leffor, cannot recontinue his own Estate without attorning implicitely to the Feoffee.

If a Lease were made to A. for L. Rem'r to B. in T. Rem'r to A. in Fee, and A. had granted his Rem'r in Fee to C. by his Deed,it passed presently, for it would be in vain that A. should attorn to a Grant by himself, Note, When the Ancestor takes a Freehold, and after a Rem'r is limited to his Heirs, the Fee velts in him; but if the first Estate be

but for 7. it does not.

If a Seigniory or Rev'n be granted by Fine, the Thing granted is presently in the Grantee without Attornment: And he may feise a Ward, or enter into Land escheated, or for a Forfeiture; but he could not before 4 & 5 Annæ 16. diffrein, or have an Action of Waste, or a Writ of Consimili Casa, or Cafu Proviso, or of Cultoms and Services without Attornment, but he might have all Things which may be feis'd without Suit.

If Ten't L. had attorn'd in a quid juris Clamat generally he lost all Priviledges, as to have the Land without Impeachment of Waste, Oc. because the Writ supposes him bare Ten't L, but if he claim'd 'em they

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hould either be allow'd, and enter'd of Record, or he should not be compell'd to attorn. (But Attornment in Pais express or implied loses no Priviledge.) The Ten't could not be compell'd to attorn to a Grant by an Infant till he were of full Age, beause he could not till then acknowledge his Priviledge. If a Mesnalty were granted for L. Rem'r in Fee, and the Ten't had atforn'd in a per que Servitia to Grantee L. saving his Acquittal, and Grantee for L. had died, he in Rem'r could not distrein, till he had likewise acknowledg'd the Acquittal in a per que Servitia brought by him.

But if fuch Mesnalty or Rev'n granted by Fine had escheated before Attornment, the Lord Paramount might distrein, &c. without Attornment, for he, if he pleas'd, might have avow'd on the Grantee, tho' he Co. L. 269. were not compellable to do it in the Grantor's Life, and the Mesnalty came to him by Title Paramount in lieu of his former Seigmory. But the Heir or Assignee of such Conusee could not distrein without Attornment, nor his Bargainee, or Conusee, nor his Feoffee, where he diffeis'd the Lessee and made a Feoffment, and Lessee re-enter'd, for those that come to the Rev'n by the Conveyance of the Party, shall not have a

claim. No Attornment was needful where a Rev'n was extended, or granted by Fine to the Use of A. and his Heirs, or bargain'd and fold. For the Rev'n was fettled in the Bargainee by Operation of the Statute, and T 4.

greater Priviledge, than he from whom they

323.

324.

he had no Remedy to compel the Ten't to attorn. And the Law is the fame where Land was devited by Will, for otherwise it would be in the Ten't's Power to frustrate the Will by refusing to attorn.

A Diss'in of a Mannor is no Diss'in of the Services, unless the Ten'ts attorn to the Diss'or, but if they do attorn, and he die seis'd, the Diss'ee can't distrein for the Services. But tho' the Diss'or has gotten the Attornment of the Ten'ts, they may afterward refuse to perform the Services to

avoid a double Charge.

No Man can be disseis'd of a Rent-Service in Gross, but at his Election, for if a Stranger take it by Coertion of Distress, or otherwise, yet may the rightful Owner make a lawful Grant thereof, and the Rent shall pass; or he may bring an Assie against the Stranger; or diffrein the Ten't for all the Arrears, tho' the Diss'or died seis'd. and tho' he has determined his Election, and admitted himself out of Possession by bringing of an Affife, as a Man may enter into Land, notwithstanding he bring an Action to recover it. And fuch a Diss'ee may release to the wrong Doer, because thereby he admits himself out of Possession; but one can't be diffeis'd by a bare Attornment of the Ten't to a Stranger.

If a Man make a Gift in T. or a Leafe L. or Y. of Part of the Demesines, and afterwards be disseised of the Mannor, and all the Ten'ts, and the Donees or Lessees attorn, and after Diss'or die, &c. yet may

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Dissee distrein on the Land given or let, for as long as the Possession continues in Donee or Lessee, so long the Rev'n, and Rent incident thereto remain in Donor or Lessor, and the devesting or revesting of the particular Estate devests or revests the Rev'n.

If the Lord of a Mannor lease part of the Demesnes, the Rev'n thereof continues Parcel of the Mannor, and shall pass by the Grant thereof; but if he make a Lease L. of the whole Mannor, excepting B. Acre Parcel of the Demesnes, and then grant away the Mannor, B. Acre shall not pass, for being in Possession it cannot be Parcel of the Rev'n expectant on a State of Freehold, but if the Lord had only made a Lease T. of his Mannor, excepting B. Acre, it should pass by the Grant of the Mannor.

## Of Discontinuance.

Discontinuance of an Estate in Lands properly signifies an Alienation by Ten't T. or one seis'd in anter Droit, whereby the Issue in T. Heir, or Successor, &c. are driven to their Action, and cannot enter. It may be done by 5 Sorts of Conveyances, viz. Fine, Recovery in a Pracipe, Feossiment, Release or Consistmation with Warranty.

Sometimes the Word Discontinuance is taken for the Plaintist's suffering the Desendant to be out of Court by neglecting to continue the Cause, which in an uninterrupted Series must be done from Day-to Day till the End of the Suit, and (a) this is not saved by the Desendant's (a) 21842.

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325.

Appearance, as Miscontinuance is, i. c. when one Process is awarded instead of another, or a Day given which is not legal.

At Law the Alienation of Abbot, or Bishop, without Affent of Covent or Chapter, was a Discontinuance to the Successor, but if the Covent or Chapter had affented, fuch Alienation had been good for ever.

326.

A Husband might discontinue his Wise's Estate before 32 H. 8. 28. but by that Statute a Husband seis'd in the Wife's Right, or jointly with her, of any Freehold or Inheritance, can't discontinue it either by Feoffment, (whether made by him alone or jointly with her,) or by suffering a Recovery without Voucher.

( s) Contra, MJOC. 28.

It is (a) faid that, if after the Husband has alien'd they be divorc'd Caufa Pracontra-

ctus, she may enter in his Life.

But this Statute faves not the Wife from being barr'd by Non-claim on a Fine levied by the Husband within 5 Years after his Death, nor does it give the Heir an Entry during the Husband's Life on the Husband's Alience having Issue by his Wife, which would have given him a Title to have been Ten't by Curtefy if he had not alien'd. the Husband alien Land whereof they are feis'd in special T. not only the Entry of the Wife is fav'd, but likewife that of the Iffue and Rem'r Man. Nor can he discontinues Rem'r in the Wife expectant on a State of Freehold in himself.

But any other Ten't T. (except a Woman claiming from her Husband,) may still by

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Feoffment, Ge. discontinue his own Estate. and the Rev'n or Rem'r depending on it; in Respect of the Privity between Ten't T. and the Islue, and those in Rev'n and Rem'r, and because an Entry would defeat the Warranty intended to be annex'd to the Feoffment, Oc. and after W. 2. which refrain'd Ten't T. from aliening, he was confrued to have fuch Power as the Law gave to those feis'd in Fee in auter Droit, whose Feoffments were voidable by Action only, their Conveyances of Things in Grant were voidable by Action or Claim, &c. and their Grants of a Thing not in Effe before, were merely void by their Death.

None can make the Discontinuance larger than the Alienation by Ten't T. made it, therefore if A. Ten't T. make a Gift in T. to B. and B. infeoff C. and die without.

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He that claims by Title Paramount above

the Discontinuance, may enter.

Since 11 H.7. 20. if a Woman feis'd in Co. L. 326. T. jointly or folely, of Land, &c. of the Inheritance, or Purchase of the Husband, or given to the Husband and Wife by his Ancestors, or any seis'd to the Use of him or his Ancestors, discontinue, he to whom the Right after her Decease should appertain, may enter.

Ten't T. may have a quod Permittat, a Writ of Customs and Services in the Debet & Solet, not in the Debet only, Admesurement, Nativo Habendo, Escheat, Consimili Casu, Cessavit, Waste. But not a Writ of Right Jur Disclaimer, quo Jure, ne injuste Vexes, 327.

nuper

nuper Obiit, rationabili Parte, Mortdancester, or sur cui Vita, for these Writs only lie for

Ten't in Fee-Simple.

A Feoffment made by Ten't in T. is a 328. Discontinuance, with or without Warranty; but a Release or Confirmation is not, for a Man can pass no more thereby than he may lawfully pass, but Warranty added toa Release or Confirmation to a Diss'or works a Discontinuance, if it descend on him that Right has; but if one having a Son marry a 2d Wife, and Land be given to the Husband in special Tail, and he have Issue by his 2d Wife, and be diffeis'd and release with Warranty and die, or if Ten't in T. of Burgh Eng. Land, have Issue two Sons and be differs'd and release with Warranty to the Diss'or and die, yet is not the Entail discontinued in either Case, because the Warranty always descends to the Heir at Law.

329.

If an Abbot be diffeis'd and release with Warranty and die, or relign, the Successor may enter. The Privation or Translation, Oc. of a Bishop is all one with his Death, as to any Act tending to the Diminution of the Revenues, but not as to others; therefore if being Patron and Ordinary he confirm a Lease by a Parson without Dean and But Chapter, and then the Parson die, and he Abey collate another, and be afterwards transfated, the Confirmation remains good during the arge Lives of the Bishop and the Successor of the Incumbent who found the Land charged,

Dy. 356. P.42.

The Release of an Husband seis'd in his Wife's Right to a Diss'or with Warranty

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never was a Discontinuance to the Wife. unless she were his Heir.

If Ten't T. release in Fee to his Lessee Y. or confirm his Estate in Fee, yet does he not discontinue the Entail, for no more passes by a Release or Confirmation than lawfully may. Therefore if Lessee L. make a Lease Y. and afterwards make a Release or Confirmaion in Fee to the Lessee, yet does he not forseit his Estate. But if Ten't T. make a seofiment with Livery, he discontinues the by ment, he forseits his Estate. Notwithstand-ing such a Feofsment made by Lessee 7. be a T. forseiture of his Estate, and a Dissin of the lesson, yet between the Parties it is a good feofment, and a Warranty may be annex'd

ail poit.
the If Ten't T. make a Lease for his own Life,
Release in Fee to the Leste, he does not at all enlarge his Estate thereby. And if Ten't T. grant his whole flate to A. and his Heirs with Livery, yet noming but for his own L. passes as to the Issue, in whose Election it shall be to look on the Estate of the Grantee as void or voidable, tho' as long as continues not deseated it be an Inheritance in I Saund. The Grantee, and his Wife shall be endow'd, &c.) 3 Rep. 84-but as to the Ten't himself, the Tail is in b. The let, that Ten't T. can't make a rightful Estate arger than for his own L. appears, for that Discontinuance is a Wrong to him in the Rev'n, and the Discontinue is a Desorceor, e, he does not at all enlarge his Estate lev'n, and the Discontinuce is a Deforceon, ad so call'd in Formedon.

Deforce-

Deforcement is any wrongful withhold ing of Land from the rightful Owner.

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332.

333.

Of Things that lie in Grant there can b no Discontinuance; therefore if Ten't T. a Rent, Advowson, Common, or Rem'rd Rev'n expectant on a Freehold, make a Gran by Deed or Fine, or disseise the Ten't of the Land out of which the Rent is iffuin whereof he is feis'd in T. and make a Feof ment with Warranty, yet does he no discontinue the Entail. But if Ten't 7. Land make a Leafe Y. and levy a Fine, th is a Discontinuance, for the Fine is a Feof ment of Record, and the Freehold paffe And if Ten't T. grant a Rent or Rem'r wit Warranty, and the Issue bring a Form don, and admit himself out of Possession he shall be barr'd by the Warranty an Affets.

Neither Exchanges, nor Letters Paten work a Discontinuance, because they do no

require Livery of Seisin.

If Ten't T. make a Lease for Life of the Leffee, he discontinues the Entail durin the Life of the Lessee, and gains a ne Rev'n in Fee, and if he after grant th Rev'n in Fee, and Lessee die, or surrende or forfeit in the Life of Ten't T. this is Discontinuance in Fee because the Grant was feis'd in Demesne as of Fee, in the Li of Ten't T. by Force of his Grant; but Ten't T. die before the Grant in Fee be ex cuted by the Death and of Ten't L. the Di continuance determines upon the Death fore 1 Ten't L. tho' the Grant were with Warran

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w, (which being annex'd to an Estate passing by Grant, cannot bar the Entry of the Isue, besusse the Estate to which it is annex'd is void at his Election.) If a Fine be levied to Ten't T. and he grant and render the Land to another in Fee, and die before Execution, there is no Discontinuance at all; or if he make Feoffment of a Part of a Mannor whereof he was feis'd in Fee, and annex the Advowfon appendant by Deed, and die before the Grant of the Advowson is executed by Prelentation and Institution of a Clerk of the Grantee upon the next Avoidance, the Enpil of the Advowson is not discontinued. If he make a Gift in T. to B. and then release to B. and his Heirs, and die, and then B. die without Issue, the Discontinuince determines, because the Estate which pas'd by Livery only, caus'd the Discontimance, and the Grant of the Fee was not one executed in the Life of Ten't T. and if Ten't T. make a Lease L. and then grant the Rev'n It in Fee to A. who grants it to B. and then uring Ten't L. die, whereby the Fee is executed in the Life of Ten't T. yet the Discontinuance the determines by the Death of Ten't L. because the Fee was not executed in the Grantee of the Fee was not executed in the Fee was not executed Ten't T. And if Ten't T. make a Lease L. and then grant the Rev'n in Fee, and the Grantee diewithout Heir, during the Life of Ten't L. and the Rev'n escheat, and the Ten't L. die, the Discontinuance is determined; but if the Litt. Seet. Rev'n had been executed in the Grantee bethe Grantee before the Escheat, the Discontinuance had remained.

A:

A Lease Y. by Ten't T. causes no Discontinuance, and the Rev'n on such Lease descends to the Issue in T. but the new Rev'n in Fee gain'd by Operation of Law upon the making of a Lease L. descends to the Heir general. A Devise by Will is no Discontinuance, nor is a Lease for 3 Lives according

Co. L. 333. to the Statute, to which every one is Party, and therefore no one can be wronged by it.

If Husband and Wife at Law had by Deed join'd in a Lease L. of the Wise's Land, this had been a Discontinuance of the Freehold, and yet the Rev'n remain'd in the Wise; but if the Husband alone had made the Lease, he had discontinued the Wise's Estate.

Wife's Estate.

If Donee infeoff his Donor, or Rem't Man, this is no Discontinuance, because the Rev'n is not discontinu'd, for which Cause, when the Rev'n is in the K. there can be no Discontinuance; but such an Entail the Rev'n whereof is in the K. might be barr'd by Fine or Common Recovery before 34 H. 8: 20. but K.'s Rev'n could never be barr'd by any Act of the Ten't T.

If there be an intermediate Rem'r in Tail, a Feoffment made to him in Rev'n by Ten't T. is a Discontinuance; and if Ten't T infeoff the Donor and a Stranger, this is

Discontinuance of the whole Land.

If Lessee L. make a Lease for his own L to the Lessor, Rem'r to him and a Stranger in Fee, this enures as a Surrender for the one Moiety, and a Forseiture for the other, so Q. How the Estate L. can be sorseited by a Deal

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e la entle rithi Deed which the Lessor agrees to? But if one lointenant infeoff his Companion and a Stranger, this vests his Moiety in the Stranger only, for as to his Companion the Live-

ry is void.

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If Husband of Leffee L. make a Feoffment n Fee, and Lessor enter for the Forseiture, this was a Discontinuance at Law of the Wife's Freehold, and yet the Rev'n was rerested, sed Q. How the Discontinuance can renain, since the Estate which pass'd by Livery, and was the only Cause of the Discontinuance,

is defeated by the Entry of the Lessor?

Also some Discontinuances are for Life ony,as when Ten't T.makes a Lease for Lessee's L some are during the Limitation of a tate T. as when Ten't T. makes a Gift in T. but if he make a Lease T. or L. Rem'r in aufe with Livery, this is a Discontinuance n Fee, because the State in Fee passes by the there livery.

When the Estate that caus'd the Disconinuance is defeated, the Discontinuance is eseated also, as if the Husband had made a costinent of his Wise's Land on Condition, nd died, and his Heir had enter'd for a breach of the Condition, the Wife might nter, for the Heir enter'd in Respect of the itle by Force of the Condition which detended on him, not in Respect of any Right, nd the Law will not adjudge the Heir to gain a rongful Estate when he does nothing but what lawfully may. Therefore his Estate preger in the one intly vanishes away, and vests in the Wife ithout any Entry or Claim by her. T, Sea

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Even at Law, if the Husband within Age had made a Feoffment of his Wife's Land, and died, his Wife might have enter'd, for he, it had liv'd, might have enter'd, but not in his own Right, but in hers, therefore fuch Right remains to her after his Death; fori is hard that the Husband's Feoffment, which would not take away his own Entry should take away hers; but the Husband's Heir in such Case could not enter, because no Right nor Title descended to him; and it an Infant being Ten't pur autre Vie make Feoffment, he can't enter after the Death o Cestuyque Vie, because then he has no Righ at all remaining in him. If Baron and Feme being both within Age join in Feoffment by Indenture of the Wife's Land referving Rent, and he die, the may have dum fuit infrac Etatem, but if he were within Age, and the of full Age, the shall not.

If two Infants being Jointenants make a form Reoffment, and one die, the Right survives A because they might have join'd in a Writ of his Right, and the Survivor may enter into the Whole, but they can't join in a dum fuit infant of his Etatem, because that Action is grounded on the Ronage of the Demandants, which is several survey for the Nonage of the one is not the Nonage of the One is not the Nonage of the Other. But if one of them only had made a Feoffment of (a) his Moiety, the Jointure had been severed while the Feoffment had remain'd in Force, and consequently there could have been no Survivor hut if he had made a Feoffment of the whole Long Land, and died, the Right would have survivid Rev're here? If two Infants being Jointenants make becan nay c

(a) 8 Rep. 43. 2.

Age heause they might have join'd in a Writ of

Age heause they might have join'd in a Writ of hight. If one Jointenant be within Age, and the other of full Age, and they join in a feoffment, and he of full Age die, the heart shall recover but a Moiety.

Not only the Heir general shall take Adnich rantage of the Nonage of the Ancestor, but also a special Heir, as the Heir by the Cund som of Burgh Eng. or Heir in special T. in the he had made a Gift in T. of his Wise's ke a land during his Nonage, and died, not only the Wise might have enter'd, but the heigh heir of the Husband in Respect of the new and he with the heart of the Husband in Respect of the new and he had made a feelight in T. but his and litate presently vanishes. If an Insant the respect of the making of the Gift in T. but his and the presently vanishes. If an Insant the stainted and died, the Issue in Respect of the making of the Gift in Respect of the making the stainted and died, the Issue in Respect of the stainted and died, the Issue in Respect of thin attainted and died, the Issue in Respect of the Corruption of Blood, was put to his Contra,

the Corruption of Blood, was put to his ker formedon.

ives A Woman being an Heiress marries, and has Issue, the Husband dies, she marries to the gain, the 2d Husband makes a Lease L. information of her Lands, the Wife dies, the Lessee surfaces to the Husband, it seems that the listeness to the Blue of the Wife may enter upon the 2d Husband, because the Estate L. which only aus'd the Discontinuance is drown'd and an institute of the Beath of Lessee L. there is no doubt but the sonse surface is the Yielding up of a State whole L or Y. to him that has the immediate with Rev'n or Rem'r, wherein the Estate L or Y. including may drown. A Surrender is either in Deed or

pl.3. cont.

\* Dyer, 58. or in Law; a future \* Interest for Y. cannot be surrender'd by Deed, but it may be sur render'd in Law, as if Leffee for ten 7. to begin at Michaelmas, take a new Leafe, for thereby he as much acknowledges the Lesfor's Power to make a new Lease, notwithstanding his Interest, as if he were Ten't in Possession, and had taken a new Lease, but there can be no Surrender of a bare Right. A particular Estate in Things lying in Livery, which might at Law pass without Deed might before 29 Car. 2. 3. be furrender'd be Parol without Deed, whether it commenced by Deed or without; but Things that he in Grant, or a Rem'r of an Estate in Land could never be furrender'd without Deed whether the particular Estate began with o without Deed.

> Tho' the particular Estate be drown'd by the Surrender as to the Party, yet as to Strangers it continues in Esse, for res inte alios acta alteri nocere non debet; therefore i the Rev'n be granted with Warranty, and then Ten't L. surrender, the Grantee shall not have Execution in Value against the Grantor during the Life of Ten't L. no shall the Surrenderee being an Infant have his Age; nor shall a Rent granted by Ten L. be avoided by a Surrenderee during the

Life of Ten't for Life.

If one grant a Rent-Charge out of hi Land to a Bishop, and afterwards infeoff the Bishop of the Land, and then the Lord en ter for the Mortmain, he shall hold th Land discharg'd of the Rent, for he affirm refer the Alienation in Mortmain, and claims

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Respect thereof the same Estate as the Bishop had. But if Ten't L. grant a Rent, and infroff the Grantee, and Lessor enter for the Forfeiture, the Rent is reviv'd, for the Leffor neentring, defeats the Estate of the Alienee, the making whereof devested his Rev'n, and claims such Estate as his Ten't had before the Alienaion which was liable to the Rent. The Grant of Rev'n for L. makes the Walte dispunishable, but if the Grantor release to the Grante and his Heirs, the Waste becomes punishble again.

The Estate surrender'd is in some Respects bsolutely drown'd for a Stranger's Benefit, nd a Lease or Grant by him in Rev'n shall fer fuch Surrender take effect presently. A. makes a Lease L. reserving 40 s. Rent, Rem'r oB. and then grants the Rev'n in Fee to B. nd A. attorns, B. shall not have the Rent: But this seems not to be Law, for the the Estate wrender'd in some Respects is look'd upon as bofisting, left a Stranger should be wrong'd by Lit. Sed. he Surrender; yet what Wrong can it be to him 575.

and the Case to pay the Rent originally reserved?

That If Leffee Y. of Land in his own Right take Wise seis'd of the Freehold, or become arson of the Church, &c. to which the Freehold belongs, his Term for Y. is drown'd;

Ten the same Time have the Ten or a Man can't at the fame Time have the reehold, and a Lease r. in the same Land; of his put the greater Estate drowns the less: Yet fa Man marry his Lessee T. the Term for T. ed en offess'd thereof, has nothing to do with his Freefirm old, and the Law, in Favour of the Wife, will reserve her Lease. If Lessee r. of a College

be

be made Head thereof, this drowns not the life Lease Y. because the Freehold wests not in hin

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but in the Corporation.

None can discontinue a State T. Gc. un None can discontinue a State T. &c. un less he once were seis'd by Force of the Tail Force. unless it be in respect of a Warranty which being made to a Feosse, or Dissor sy and descending to the Heir, had the Esse of a Discontinuance in taking away the Entry of the Heir, before 4 &c. 5 Annæ 16 Winder the Marranties made by them who have no Estate of Inheritance in the Land, &c. sha was be void against the Heir. And where no lid greater Estate passes than for L. of Tenant in T. as in Grants of Rev'ns, &c. a Warrant added, whether by Ten't T. or any other Ancestor, never caused any Discontinuance. 339. 340.

But such Feoffments and Grants made by them, who never were seis'd by Force of tall such Estates, are good against the Grantor state during their Lives.

341.

An Alienation by Parson or Vicar of the It I Land of the Church never was a Discontinuance, for these have not the Right of the I have ance, i.e. in consideratione Legis, and non the Minime advance superstite: When a Lease L. in the I wing, the Fee is in Abeyance during the Life of J. S. So the Freehold of the Gleb is in Abeyance during the Life of J. S. So the Freehold of the Gleb is in Abeyance during the Vacancy of Parsonage: And so is the Freehold of the Land of a Bishoprick during a Vacancy and the Freehold of Land giv'n to A. sor B. and I like I made I was a life of I was a lif

the life, was in Abeyance, by the Death of A. Vid. supra,

ill an Occupant enter'd.

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But a Parson, Vicar, Archdeacon, Preend, Ga. are effeem'd in some Cases to have Fee qualified for the Benefit of the Church, or they may have a Writ of Waste, or Enty or they may have a visit communem Legem, ty in confimili Cafu, or ad communem Legem, as a derminum qui prateriit; or a qued perinat, or a contra formam Feoffamenti, or a Writ of Mesne; none of which Writs Lend has Lean have. But a Lease T. made by them sha would by their Death, and they shall have in old of Patron and Ordinary, so that to such at it surposes they have but a State L. But a Bishop, Abbot, Dean, and Master of the allospital, seeing the Fee and Right was simulatem, and they might maintain a Writ of light, might at Law discontinue the Land, thereof they were solely seis'd. But they Vit of Melne; none of which Writs Ten't

the best of they were solely seis'd. But they ce of all not have Aid, in respect of their high antor thate, except a Dean collative by K. who hall have Aid of him.

It has been resolved, that no Lay Hospital within the 31 H. 8. of Monasteries, but within the 31 H. 8. of Monasteries, but of the plant of the plant of the plant of the plant of the oundation, or after, that divers Priests L. bould be maintained in it, to celebrate Dine Service to the Poor, and pray for Souls, at such Hospital is Lay; and no Hospital Gleb me to the Crown by 1 Ed. 6. whether Lay of Religious.

Of the Nor will it follow that a Parson, & hath ancy see, because the Grant of an Annuity by or B. It was an and Ordinary, Life made by Patron in Vacation, and confirmed

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firm'd by Ordinary, or made by Parson ha ving quid pro quo, and confirm'd by Ord nary only, would at Law bind all Succe fors for ever: For it is a Maxim, that of a Land there is a Fee, either in some Person or in Abeyance; and that every Land i Fee may be charg'd with a Rent in Fee or way or other; and fuch Grant is good, b cause made by all that have Interest: B where the Fee is not perpetually in Abe ance, but may every Hour possibly come Effe, it can't be charg'd till it come in Effe as when a Rem'r is giv'n to A's Heirs, can't be charg'd in A.'s Life.

A Grant of Rent by Ten't T. shall nev be avoided, if the Entail be cut off: N shall his Issue avoid it, if it be granted one whom the Donor diffeis'd in Confider tion of a Release of his Right. Where of Vid. supra, has 13 Acres in a Meadow of 80 yearly be set out, and grants Rent out of those

Acres generally, lying in the Meadow of 8 without mentioning where they lie partic larly; there as the State removes, the Char

shall remove.

Not only a Prebend, Chantery, and C pel, but also a Church Parochial may Donative, and exempt from all ordina Jurisdiction, and the Incumbent shall fign to the Patron, and he shall be vilit by him only, but he must be an able Cle infra facros Ordines; and if he be disturb the Patron shall have a Quare Impedit, a the Writ shall say, Quod permittat ipsum p Jentare ad Ecclesiam, and the Declarati shall shew the Special Matter. No la

6. 79.

344

shall incur to the Ordinary on the Patron's neglecting to collate, except it be so specially provided in the Foundation: But the Yelv. 61. Ordinary may compel him to fill the Church by Church-Censures. One Presentation by the Patron, and Institution thereon, make it presentable for ever: But Presentation by a Stranger, and Institution thereon, are void.

Bishopricks at first were donative per Traditionem baculi & annuli: K. John granted that they should be eligible. A Church. Hospital, or Free Chapel, founded by K. without any Special Exemption, is visitable by the Chancellor only; and K. may licence a Subject to found such Church, Ge. and to ordain, that it shall be donative, and

visited by the Founder.

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Admission is, properly, when the Bishop admits one examined by him to be able; sometimes it is taken for Institution, as where it is faid, Cujus presentatus sit admissus. i.e. Institutus. Institution is when the Bishop says these Words, Instituo te rectorem talis Ecclesia cum curà animarum, G' accipe curam tuam & meam. But it is said, that every Institution implies that the Person instituted has rdina the Cure of Souls, tho' the Words, Accipe curam the Cure of Souls, tho the Voords, Accipe cutality that the tuam & meam, are not in the Instrument of Institution, and tho' the Parson has a Vicar en
to Cle dow'd. A Church is full by Institution against a Subject, but not against K. till Induction, for which Cause K. may revoke a Presentation before Induction.

Whether a Church be full, shall regularby be tried by the Bishop's Letter, because

In Insti-

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Inflitution is a Spiritual Act; but whether it be void, shall be tried by the Common Law.

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At Law, Plenarty was a good Bar to a Quare Impedit brought by any but K. and no Clerk once instituted could be removed at the Suit of any but K. fo great Regard had the Law to the Bishop's Institution; nor cou'd K. himself present after Induction or remove the Clerk but by Action. And at Law an Usurpation, even on an Infant or Feme Covert, having an Advowson by Descent or Purchase, or on Ten't L. Ge. pu the Infant and Feme Covert, and those in Rev'n to their Writ of Right : But by 7 Q. A. no Usurpation shall drive the Patron i a Writ of Right of Advomfon.

Usurpation by Collation puts him that has Right of Collation out of Possession but one that has Right of Presentation can be put out of Possession by Collation, but the Collation shall be intended to be made by the Bishop Provisionally till the Patron prefents, and shall not drive him to hi

Quare Impedit.

By W. 2. an Incumbent may be remove by Quare Impedit, tested within six Month after the Plenarty; but the Incumbent mu be nam'd in it, or he shall never be remo And at Law no Incumbent could by remov'd; but if the Patron had brought h Quare Impedit before the Church had bee dicta e full, he should have had a Writ to the Bishop, and should have remov'd any Cler Vid. Wat that came in pendente lite, by Usurpation fon 217. but if one who has no Right bring a Quan live 1 Right, Impedi

Impedit, and the rightful Patron being a Stranger to the Writ, presents, and his Clerk be receiv'd, he shall never be remov'd.

If the Bishop be nam'd in a Quare Impe-

dit, there can be no Lapfe.

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If Ten't T. release all his Right to a Dis- 345. feifor, or grant all his Estate to another, he (a) puts the Right of the Entail in Abey- (a) Contra ance; so if he be attainted of Felony, and 2 Roll. Rep. K. after Office seise the Land, or if he in 505, &c. Rem'r in T. release to Ten't L. all his Estate and Right in the Land; and it feems that in this last Case Lessee L. shall have an Estate for Life of Ten't T. Expectant on his own life, and in none of these Cases the Grantor or Releafor shall have Waste afterwards: But tho' Ten't T. make a Leafe for his own life, or Ten't in Fee release all his Right to his Lessee L. he may have Waste.

Estate and Interest are collective Words: for if A. be Ten't L. Rem'r in T. to B. Rem'r in Fee to A. and A. grant totum statum, or mum interesse suum, both his Estates pass.

Right fignifies properly in Writs and Pleadings, when an Estate is wrongfully devested, and turn'd to a Right; but in Conveyances it includes the Estate in Esse, is when a Leffor releases all his Right to his remo leffee and his Heirs; and in Fines the Right ld b of the Land includes and paffes the Ettate of bee dita esse jus ipsius B. &c. the Land, as when A. cognoscit tenementa pra-

o the Title is properly, some say, when a Man Cler has a Cause of Entry for which he can tion have no Action; but legally it includes a Quant hight, and is the more general Word; a Release

U 2 Release

Inflitution is a Spiritual Act; but whether it be void, shall be tried by the Common Law.

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At Law, Plenarty was a good Bar to a Quare Impedit brought by any but K. and no Clerk once instituted could be removed at the Suit of any but K. fo great Regard had the Law to the Bishop's Institution; nor cou'd K. himself present after Induction or remove the Clerk but by Action. And at Law an Usurpation, even on an Infan or Feme Covert, having an Advowfon by Descent or Purchase, or on Ten't L. &c. pu the Infant and Feme Covert, and those in Rev'n to their Writ of Right : But by 7 Q. A. no Usurpation shall drive the Patron i a Writ of Right of Advomfon.

Usurpation by Collation puts him that has Right of Collation out of Possession but one that has Right of Presentation can't be put out of Possession by Collation, bu the Collation shall be intended to be made by the Bishop Provisionally till the Patro presents, and shall not drive him to hi

Quare Impedit.

By W. 2. an Incumbent may be remove by Quare Impedit, tested within six Month after the Plenarty; but the Incumbent mu be nam'd in it, or he shall never be remo And at Law no Incumbent could be remov'd; but if the Patron had brought h Quare Impedit before the Church had bee dicta e full, he should have had a Writ to the Bishop, and should have remov'd any Cler his a Vid. Wat that came in pendente lite, by Ufurpation hive i but if one who has no Right bring a Qual Right, Impedi

fon 217.

345.

Impedit, and the rightful Patron being a Stranger to the Writ, presents, and his Clerk be receiv'd, he shall never be remov'd.

If the Bishop be nam'd in a Quare Impe-

dit, there can be no Lapfe.

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If Ten't T. release all his Right to a Disfeifor, or grant all his Estate to another, he (a) puts the Right of the Entail in Abey- (a) Contra ance; fo if he be attainted of Felony, and 2 Roll. Rep. K. after Office seise the Land, or if he in 505, &c. Rem'r in T. release to Ten't L. all his Estate and Right in the Land; and it feems that in this last Case Lessee L. shall have an Estate for Life of Ten't T. Expectant on his own Life, and in none of these Cases the Grantor or Releasor shall have Waste afterwards: But tho' Ten't T. make a Leafe for his own life, or Ten't in Fee release all his Right to his Lessee L. he may have Waste.

Estate and Interest are collective Words: for if A. be Ten't L. Rem'r in T. to B. Rem'r in Fee to A. and A. grant totum statum, or mum interesse suum, both his Estates pass.

Right fignifies properly in Writs and Pleadings, when an Estate is wrongfully devested, and turn'd to a Right; but in Conveyances it includes the Estate in Este, s when a Leffor releases all his Right to his leffee and his Heirs; and in Fines the Right of the Land includes and paffes the Effate of

the hand, as when A. cognoscit tenementa practice that a esse jus ipsius B. &c.

Title is properly, some say, when a Man Cler has a Cause of Entry for which he can atton have no Action; but legally it includes a Quantilight, and is the more general Word; a Release

Release of Right releases a Title; so e converfo. It often fignifies the Means by which one comes to Land, as Fine, Feoffment, &c. as when 'tis faid, Veniat affifa super titulum: i. e. the Conveyance by which the Plaintiff claims.

346.

347.

A Feoffment by a Bishop, or Dean folely feis'd, was at Law a Discontinuance; but a Dean could never discontinue the Land whereof he was feis'd in Right of himfelf, and his Chapter; for of fuch Lands he and the Chapter must join in Suit, and his Feoffment of fuch Lands is a Dissin: But an Abbot might discontinue the Land of his House, for all the Monks were dead in Law, and he only had Capacity to fue, and be fued, to infeoff, give, demise, Oc.

A Matter of an Hospital folely seis'd, might have discontinued; but one feis'd, together with his Brethren, as a Body Poli-

tick aggregate, never could.

He in Rem'r in T. diffeises Ten't L. and makes a Feoffment, and dies without Issue, and Ten't L. dies, he in Rev'n may enter; for the Rem'r Man was never feis'd of the Freehold and Inheritance by Force of the Tail.

Of Remitter.

R Emitter is an Operation of Law upon the meeting of an old Right remedia ble, and a latter defeafible Estate in the sam Person without his Folly; whereby the for mer is restor'd, and the latter defeated: Fo the Law prefers a fure Right, tho' but to Rept, imall Estate, to a great defeasible Estate.

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But there shall be no Remitter to bare Titles of Entry, nor can there be any Remitter but by the Descent of an Estate; therefore if an ancient bare Right descend to one who has a latter Right, yet is he not remitted.

If Ten't T. disseise his Discontinuce, and have Islue, and die, his Islue is remitted by the Discent of the Freehold in Law before he enters, tho' the Discontinuee be an Infant

or Feme Covert.

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As in the last Case there is a Remitter where the defeafible Estate and old Right descend together, the Law is the same, where Ten't T. enfeoffs his Islue within Age, and the Right of the Entail after descends to the Feoffee, whether within Age, or of Age at the Time of the Descent; and notwithfanding he might have waiv'd the Estate gain'd by the Feoffment after he was of full Age, yet shall he be remitted, because such

Waiver would have been to his Loss, and no Vid. infra Folly could be imputed to him when he 453.

flue, took the Estate. nter;

And if the Issue in T. infeoff'd by his f the Father, grant a Rent or Common out of the f the Land, and then the Right of the T. descend o him, he shall hold the Land discharged; or the State which he had when he made the Grant, is utterly defeated. So if the upor Diss'ee's Heir disseife the Diss'or, and grant nedia Rent, and then the Diss'ee die, the Land s discharged; for the Heir is remitted, be-Vid. Lit. ne for ause a new Right of Entry descends to him. Sect. 693.

For Father disseises Grandsather, and grants a lit to Rent, and dies, Grandsather dies, the Son is the Land of the Rent, and dies, Grandsather dies, the Son is the Land of the Rent, and dies, Grandsather dies, the Son is the Land of the Rent, and dies, Grandsather dies, the Son is the Land of th

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remitted, and shall avoid the Rent; nor can Co. L. 45, the Grant in these Cases enure by way of Estoppel, because an Interest passed from the Grantor: But in these Cases the Grantee may have a Writ \* Co. L. of Annuity against the Grantor, \* and his 144. b.

Heirs if mention'd in the Grant; but it feems that if the Issue in T. Oc. had made a Lease T. it should not have been avoided by the an Lit. Sect. Remitter. 289.

If Ten't T. make a Lease L. and then grant a Rent in Fee, and Ten't L. die, yet the Rent remains; for tho' the Rev'n in Fee gain'd pur by the Discontinuance be defeated, yet because put the Grantor at the Time of the Grant had the Right of the Entail in him, tho' he were not then feis'd by Force thereof, the Rent re-ted

mains good against him.

Co. Lit. 3+8. b.

At this Day if Ten't T. make a Feofinent brest to the Use of his Issue, and die, the Issue shall not be remitted, because the Statute of Uses says expressly, That Cestuyque Use shall Usus have the Estate of the Land in such Quality, Manner and Form as he had the Use; but the Issue in T. in that Case, may waive the Possession, and recover in a Formedon against the Feosses, for otherwise the Land might be so far incumbred by the Ten't T. that it has would be nothing worth to the Issue; and the Yearty himself that comes to the Land by Force of the said Statute of Uses, cannot be remitted, yet if he die, and the Land descend to his Issue, he shall be remitted, for the Land comes to him as Heir by Course of mitted Common Law. At this Day if Ten't T. make a Feoffment brelo Common Law.

The chief Cause of Remitter is, because there is no Ten't of the Freehold, but the sut same Person that has the Right, and he can't sue himself; therefore the Law judges him

bis to be in fuch Plight, as if he had recovered gainst another.

There can be no Remitter to him that has the an Action without Right, as the Issue of Ten't T. who has suffered a Common Reco-There can be no Remitter to him that has 349. ant very in which there is Error. Nor to one—
the that has a Right without an Action, as if B.
in'd purchase an Advowton, and suffer an Usuruse pation, and six Months to pass, and the
the Usurper grant the Advowson to B. and his
not Heirs, and B. die, yet is not his Heir remitted; for he can't have a Writ of Right of Adnowson, because neither he nor his Ancestors ever nent presented; but it seems that there shall be a Re-ssilled mitter in this Case by 7 Q. A. which gives the te of Patron a Quare Impedit, notwithstanding an

hall Usurpation.

A Man can't be remitted to a Thing rebut rardant, appendant, or appurtenant, until he are the lave re-continued the Principal, for he can lave no Action to recover the Thing appendant, or at it have no Action to recover de Principal and lor to which, or grant the Advowson to Land Ien't T. and his Heirs, and he die, yet is not the Issue remitted. But a Remitter to the Appendant, tho' they were severed before the Resister; as if the Discontinuee grant the Minnor to Ten't T. and his Heirs, saving Minnor to Ten't T. and his Heirs, laving he Advowson, and Ten't T. die, and the The Mannor descend to the Issue, he is not only

U 4 remit-

remitted to the Mannor, but to the Advowfon also: So if a Diss'or suffer an Usurpation, and Diss'ee re-enter into the Mannor to which, &c. he re-continues the Advowson.

350.

If Ten't in Special T. have Issue a Daughter, and his Wise die, and he marry again, and have Issue another Daughter, discontinue, and take back a State in Fee, and die, and the Land descend to the two Daughters: Or if Ten't T. inseoff his Heir apparent within Age, and a Stranger, and die; or if a Discontinuee, after Death of Ten't T. inseoff the Issue within Age, and a Stranger; in all these Cases there is a Remitter to no more than a Moiety, and the Issue in T. and the other become Ten'ts in Common.

If Ten't T. infeoff his Heir apparent of full Age, and die, the Heir shall not be remitted, because it was his Folly to take such

Feoffment.

351.

If Ten't T. infeoff a Woman of the Land entail'd, and die, and his Issue being within Age marry the Woman, he is presently remitted by the Freehold in the Wife's Right, which he gains by the Intermarriage; and yet the Freehold in the Wife's Land giv'n by Marriage to the Husband, is so uncertain, that it shall be lost by the Wife's Attainder before Issue had, and consists so much in Privity, that by the Attainder of the Husband for Felony, the Lord gains but a Pernancy of the Profits during the Coverture, and the Freehold remains in the Wife.

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The Husband is possess'd of all his Wife's Chattels Real in her Right, and if he survive her, he shall have them by Gift of Law in his own Right; and he may grant, demife, forfeit, or fell 'em in his Wife's Life, but he can't dispose of 'em by Will: The Wife surviving him, shall avoid a Rent-Charge, &c. granted by him, but not a Demise made by him for part of the Term.

It feems that fuch a Chattel of the Wife's may be fold by the Sheriff in the Wife's Life, on an Execution of a Judgment in

Debt against him.

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Chattels Real or Personal which the Wife has in autre Droit, as Executrix or Adminifratrix, shall not survive to the Husband: And if the grant a Term to her Use before the Coverture, or have a meer Possibility, the Husband furviving her, shall not have it, but her Executors or Administrators.

If the be dispossessed of a Term before Marriage, or have a Right to any Chattel Real or Personal, or to have an Action of Debt on a Bond, the Husband shall have no Benefit of 'em unless he recover during the

Coverture.

But the Husband furviving, shall have luch Chattels as are partly in Possession, and partly in Action, which happen during the Coverture, as Arrears of Rent of any Kind, becoming due after the Marriage; but he could not recover any Arrears due to the Wife before the Coverture, until 32 H. 8. and they shall remain with the Wife surviving the Husband, whether due before or Vid. fupra, after Marriage. US

If

If a Church become void during the Coture, he shall have a Quare Impedit in his own Name, as some hold, but if the Wise survive, she shall present, and the Husband, if he survive, shall present to a Church void during the Coverture, but not to one void before.

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The Wife's Chattels Personal in Possession, are absolutely given to the Husband

by the Marriage.

But if he die before he seises an Estray in her Mannor, she shall have it, for there was no Property in her before Seisure. Where she has but a bare Possession, as if she find Goods, or they be bailed to her, or she be Executrix to a Bailee, and marry, Detinue must be brought against the Husband and Wife.

352.

If the Husband make a Feoffment of the Land whereof the Wife is feis'd in Fee, and the Feoffor let the same to the Husband and Wife for their Lives, this is presently a Remitter to the Wife as to the whole Land, for the cannot be remitted to a Moiety only, because there are no Moieties betwixt Husband and Wife, and no Folly shall be adjudg'd in the Feme Covert for taking back the Estate L. for it shall be adjudg'd the Act of the Husband, and not of the Wife; and the Law is the fame, tho' the faid Leafe were by Indenture, or by Grant and Render in a Fine; and yet if the Lessor bring an Action of Waste against the Husband and Wife, the Husband shall be estopp'd to shew the faid Matter against his own Act in making fuch Feoffment, and taking back the faid Leafe

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Lease L. but if he make Default at the grand Diffress, and the Wife be receiv'd. the may plead all the faid Matter, and barethe Lessor, for a Wife receiv'd for the Husband's Default, shall have the same Advantage in Pleading, as if the were Sole, and insome Cases more, as if she be receiv'd in Affife, and vouch a Record, and fail thereof at the Day given to bring it in, the shall not, W. 2. 25. be adjudged a Diss'or, which would make herliable to double Damages, and a Year's Imprisonment, for the Law pities the Weakness of a. Woman unaffifted by her Husband in making her Defence. So if the alone levy a Fine executory, and in a Scire Facias against her and her Husband she be receiv'd on his Default, the shall bar the Conusee, which if sole, she could not do. For since the Husband, if be had appear'd, might have barr'd the Co- Co.L 46.2. nusee, the Wife on his not appearing shall plead. the same Matter.

When the Husband levies a Fine of the Wife's Land, and the Conuse grants and renders to 'em both, the Wife not being Party to the Original, nor Conusance, can take no good Estate, but by Way of Rem'r, yet she does take a present Estate voidable, for if it were void it could not work a Remitter. The Reason why the Wife shall not be concluded by taking the State by Fine is, for that she is not examined where. In the Fine she only takes an Estate, but where she parts with any Right she is to be examined, because thereby she shall be barr'd for ever. Therefore, if the Husband and Wife Ten'ts in special T. levy a Fine,

and

and take back à State in Fee, she shall not be remitted against the Fine levied by her, but the Issue should, before 4 H. 7. 24. &c.

Co. L. 352. An Estoppel is where a Man by his own Act or Acceptance is concluded to alledge the Truth; it may be, 1st, By Record, as Letters Patents, Fine, Recovery, Plea, taking of a Continuance, Confession, Imparlance, Warrant of Attorney, Admittance. 2d, By Matter in Writing, as an Indenture, or Deseasance, or an Acquittance by Deed indented, or Poll. 3d, By Matter in Pais, as Livery, Entry, Partition, Acceptance of Rent, or Acceptance of an Estate; as in the Case above, where the Husband accepts an Estate from his Feossee, for the Life of himself and his Wife.

As to Estoppels, observe these Rules.

1. They ought reciprocally to bind both Parties, therefore, regularly they extend not to strangers; but Privies in Blood, as the Heir; Privies in Estate, as the Feosfee, Lessee, &c. Privies in Law, as the Lord by Escheat, Ten't in Dower, or by Curtely, incumbent of a Benefice, and others that come under the Estate of him that was Party to the Ast which Causes the Estoppel shall be bound, and take Advantage thereof, and a Rebutter is a Kind of Estoppel.

Vid. supra,.

2. That which causes the Estoppel, ought to be certain to every Intent, and directly contradictory to the Matter which it concludes a Man to alledge; nor is it sufficient that it may be prov'd so by Argument.

3. It must be by fomething precisely affirm'd, therefore what is spoken Imperso-

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4. A Matter alledged that is neither traversable nor material, shall not be an Estoppel; for it would be hard to take from a Man his Right for want of Caution in his Expressions of Matters of so little Consequence.

5. Regularly a Man shall not be concluded by Acceptance of Rent, &c. before his Title, in Respect whereof he might defeat the Estate whereon it was reserved, is accrued to him, for a Man cannot be said to waive what

be has nothing to do with.

6. Estoppel against Estoppel puts the

Matter at large.

7. Matter alledg'd by Way of Supposal in Counts, shall not conclude the Plaintiff after Nonsuit, because it is not precisely alledg'd by him, and by suffering a Nonsuit, he shows that he doth not insist on the Truth of it; but it is otherwise after Judgment given; and all other Pleadings of either Party which are precisely alledg'd, shall conclude after Nonsuit.

8. Where the Truth appears in the same Record, the adverse Party is not estopp'd to alledge it. Therefore, tho' a Fine levied without an Original be only voidable, yet if an Original be brought, and a Retraxit enter'd, the Fine levied afterward is void, because the Truth appears of Record. A Church is appropriated to a Bishop and his successors after the Death of an Incumbent, the Bishop by Indenture makes a Lease 7. of the Parsonage to begin after the Incumbent's

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Death, this never was any Estoppel, because it appears in the Demise it self, that the Bishop could have no Estate in Possession, or Rev'n, of the Parsonage, during the Life of the Incumbent, who was seis'd thereof in Fee at the Time of the Lease, and therefore it must needs be void.

9. All Strangers shall take Benefit of Records which run to the Disability or Legitimation of a Man's Person, as Outlawry, Attainder, &c. and Bishop's Certificate of Profession, Excommunication, Bastardy,

Oc.

If the Bishop certify a Bastard Eigne to be a Mulier, the adverse Party may confess and avoid, by alledging the special Matter.

If Ten't T. discontinue, have Issue a Daughter, and die, and the Daughter marry, and the Discontinuee make a Lease to Husband and Wise, she is remitted, tho she were of full Age when she married, for Remitter is savoured in Law; but if a Feme Dissee take a Husband, a Descent cast takes away her Entry.

If Husband and Wife be Ten'ts in special T. and he discontinue and take back a State L. to himself, and his Wife, both of them are remitted maugre the Husband; for there being no Moietics between 'em, she must be remitted to the Whole, or not at all, and she can't be remitted unless he be

remitted also.

As the Discontinuance or Develling of the particular Estate displaces all Revins and Rem'rs expectant thereon, so the Recontinuance of the particular Estate revests the Rev'ns

354.

Rev'ns and Rem're, and defeats all defeafible Estates in the same Land, not only out of a common Person, but also K. himself; as is B. be Ten't T. with Rem'r to C. and discontinue, and take back a State in T. with Rem'r to K. by Deed inroll'd, and die, his Issue being remitted, the Rem'r is revested in C. and the Law is the same where Land is recover'd by good Title against Ten't T. or L. where the Rem'r is in the K. but a tortious Entry, or salse, or seign'd Recovery shall never devest a State out of the K.

But if there were Ten't L. Rem'r in T. to B. Rem'r in Fee to C. and Ten't L. had been disses'd, and a collateral Ancestor of B. had released to the Dissor with Warranty, before 455 Anna 16. and died, and Ten't L. had enter'd, yet should not B. be remitted to the State T. because his Right to it was Remediless, while the Warranty continued in Force, therefore the Dissor had a Fee determinable on B.'s dying without Issue, and the Rev'n was

revested in C.

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If a Fine fur grant and rend be levied for L. or T. with Rem'r over, the Execution of

the first State executes the Rem'r.

If Feme Lessee L. lose by Default in a seign'd or salse Action, the Lessor's Rev'n is devested, and he can't bring Waste while the Recovery continues in Force; but if the Feme marry, and the Recoverer make a Lease L. to the Husband and Wise, the Wise is remitted, and the first Lessor also, and then he may have an Action of Waste. But if the Recoverer bring Waste against the Husband

355.

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band and Wife, the Husband has no Reme- and dy but to make Default, and suffer the again Wise to be received. The Cause why the Force

356. a.

355.

wife to be received. The Cause why the Wife is remitted in this Case is, for that she may have a guod ei Desorceat against the Recoverer by W. 2. 4. which gave this Writ to Ten't L. and T. losing by Desault, but at Law her Right was Remediless, and consequently she could not be remitted.

By the Equity of the said Statute, if the Wife be Lessee L. and the Husband and Wife lose by Desault, they shall have a guod ei Desorceat, tho' the Statute speak of Ten't L. &c. and the Husband is not Ten't L. but only seis'd in the Right of the Wife. But if Husband and Wife lose by Desault, and the Husband die, the Wife shall not have this Writ, for a cui in Vita is given her in that Case, by W. 2. 3.

It has been questioned whether a guod ei Desorceat lies upon a Recovery by Desault in an Action of Waste against Ten't in Dower or by Curtesy, and it seems that it doth; for tho' the Judgment be not given only on the Desault, and the Descault in an Action of Waste against Ten't in Dower or by Curtesy, and it seems that it doth; for tho' the Judgment be not given only on the Desault, and the Descault in a person of the Judgment; and the Statute is beneficial, and therefore shall have a favourable construction; and it is presum'd that the Plaintiff when an Assis is awarded by Desault, yet the Desault is the principal Cause of the Judgment; and the Statute is beneficial, and therefore shall have a favourable construction; and it is presum'd that the Desendant who loses by Desault knows not of it; and the Wife shall be received on her Hus of it; and the Wife shall be received on her Hus

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n her

Hus

Husband's making Default in fuch Action, and shall have a cui in Vita on a Recovery the against her Husband by such Default, by the force of W. 2. 3. yet the Words of that Statute likewise are per Defaltam, &c. and a Writ of Deceit, which only lies on a Recovery; but and a quod ei Deforceat lies where an Assise is and awarded by Default, and the Jurors sind for the Plaintiff, in which Case it is evident the that the Judgment is not given on the Deand sault only. So if he in Rev'n be received on Default of Ten't L. and plead to Issue, and it be found against him, Ten't L. shall en't have the said Writ, and yet the Verdict the against him in Rev'n, as well as the Deby sault of Ten't L. is the Cause of the Judgwise ment.

As to the Objection That this Writ lies the Plaintiff, in which Case it is evident

Nife ment.

As to the Objection, That this Writ lies only where no Attaint lies, the Answer is plain.

I. No (a) Attaint lies in this Case, (a) Q. Cro. ault because the Verdict be sound by the Oath of 12 Men, yet the Jurors are not liable to an Attaint, because it is but an Inquest of Office, i. e. not found in a Court of Record on an Issue there join'd, but only found before the Sheriff, in order to inform the Court of some Particulars, without the Knowledge no whereof they can't proceed.

In the lies on Recovery by Default in Assis, and also a quod ei Deforceat.

As to the Objection, that this is a personal Action, it is true that at Law in Waste rable against Ten't in Dower, &c. Damages only were recovered, yet since the Statute of Glotostefer, the Place wasted is to be recovered, and

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355.

band and Wife, the Husband has no Remedy but to make Default, and fuffer the Wife to be receiv'd. The Caufe why the Wife is remitted in this Caie is, for that the may have a quod ei Deforceat against the Recoverer by W. 2. 4. which gave this Writ to Ten't L. and T. losing by Default, but and Law her Right was Remediles, and consequently she could not be remitted.

By the Equity of the faid Statute, if the Wife be Lessee L. and the Husband and Sult Wife lose by Default, they shall have a guod ei Deforceat, tho' the Statute speak of Ten't L. &c. and the Husband is not Ten't L. but only seis'd in the Right of the Wife. But if Husband and Wife lose by Default, and the Husband die, the Wife shall not have this Writ, for a cui in Vita is given her in that Case, by W. 2. 3.

It has been questioned whether a quod is Deforceat lies upon a Recovery by Default in an Action of Waste against Ten't in Dower or by Curtesy, and it seems that it doth; for tho' the Judgment be not given only on the Default, and the Defendant may give Evidence to the Jury which are to enquire on the Writ de Vasto Fasto awarded on the Default, and the Jury may find no where waste done, as they may find against the Plaintiff when an Assis is awarded by Default, yet the Default is the principal Cause of the Judgment; and the Statute is beneficial, and therefore shall have a favourable Construction; and it is presum'd that the Defendant who loses by Default knows not of it; and the Wife shall be received on her Hus of it; and the Wife shall be received on her Hus

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Husband's making Default in fuch Action, and shall have a cui in Vita on a Recovery the against her Husband by such Default, by the Force of W. 2. 3. yet the Words of that Statute likewise are per Defaltam, &c. and a Writ of Deceit, which only lies on a Recovery by Default, lies on such a Recovery; and a quod ei Deforceat lies where an Assis is awarded by Default, and the Jurors find for the Plaintiff in which Case it is available. the Plaintiff, in which Case it is evident the that the Judgment is not given on the De-and fault only. So if he in Rev'n be receiv'd e a on Default of Ten't L. and plead to Issue, and it be found against him, Ten't L. shall en't have the said Writ, and yet the Verdict the against him in Rev'n, as well as the De-by sault of Ten't L. is the Cause of the Judg-wise Ment.

As to the Objection, That this Writ lies only where no Attaint lies, the Answer is plain. 1. No (a) Attaint lies in this Case, (a) 2. Cro. ault because the the Verdict be sound by the Oath of 12 Men, yet the Jurors are not liable to an Attaint, because it is but an Inquest of Office, i. e. not found in a Court of lant Record on an Issue there join'd, but only sound to be some Particulars, without the Knowledge no whereof they can't proceed. 2. An Attaint lies on Recovery by Default in Assis, and also a quod ei Desorceat.

As to the Objection, that this is a personal Action, it is true that at Law in Waste able against Ten't in Dower, &c. Damages only were recovered, yet since the Statute of Glonot refer, the Place wasted is to be recovered, and

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and therefore the Damages are not now the Principal, for omne magis dignum trahit ad feminus dignum, and the Damages may be releas'd, and the Place wasted only recovered, which could not be if the Damages were the Principal: And tho' in Waste in the Tenuit by Jointenants against one who was their Ten't, the Release of one bar the other, yet in an Action of Walte in the Tenet, whether against Lessee L. or T. the Release of one bars not the other.

356.

Every Writ of Waste must suppose that the Waste was done ad Exharedationem of the Plaintiff, and the Inheritance must continue at the Time of the Writ. A Leffee may plead Riens in le Rev'n generally against a Grantee of the Rev'n, but not against his Leffor, but he must shew how it was develted.

Yet if Lessee L. make a Feoffment on Condition, and the Feoffee do Walte, and Lesse re-enter, or if a Dissor of Lessee L. do Waste, and Lessee re-enter, the Lessor may have an Action of Waste against the Leslee, tho' the Rev'n was not in him when the Waste was done, for when it is revested, he is restored to it in such Plight as if it had always continued in him, and it was the Leffee's Fault to fuffer the Waste to be done, so if a Lessee L. Vid. 2 Inft. of Land belonging to a Bishop do Walte during the Vacancy, the Successor may have

152.

Waste against the Lessee. N. B. Tho' the Discontinuance were by Matter of Record, the Remitter may be by

Matter in Pais.

If the Husband make a Feoffment of the Wife's Land, and take back an Estate to himself and Wife and a 3d Person, the Wife

is remitted but to a Moiety.

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If the Husband make a Feoffment of the Wife's Land, and go beyond Sea, and she take a State of Freehold in his Absence, and he when he comes back agree to it, this is certainly a Remitter. And it seems also that it is not in the Power of the Husband when he comes back by any Disagreement to the Estate to prevent the Remitter, for it was a Remitter presently, and the Husband can't devest the State made to the Wife, which was devested by the Remitter before, and the rightful Estate being restored, it is not in his Power to revive the Wrong. Nor can the Wife after his Death avoid being remitted.

But if both Estates had been originally waiveable, there tho' Primà Facie she be semitted, yet after the Husband's Death, she may elect which of 'em she will. As if Land be given to Husband and Wise in Fee, and he make a Feoffment, and take back a State in T. after his Death she may chuse either Estate.

Ten't in T. Female discontinues, and takes back a State in Fee, and dies, leaving a Daughter and Wise Privement Enseint with a Son, the Daughter is remitted, nor shall

the Son born afterward devest it.

If the Husband make a Feoffment of the Wife's Land, and the Feoffee be diffeis'd, and the Difs'or let the Land to the Husband and Wife for L. this is a Remitter to the Wife, the

357

the Diss'or was a wrongful Doer, and the Entry of the Feoffee was lawful on him. But if the Wife were of Covin that the Dissin should be done, she shall not be remitted: For tho' she can't be a Diffeisoress by her Command Precedent, or Agreement Subsequent, but by her actual Entry or proper Act only, yet it is holden that her Procurement or Agreement only to do a Wrong to cause a Remitter, shall make her a Disfeiforefs, so far as to make her lose her End in agreeing to the Wrong, and the shall not

gain a Remitter by it.

Covin is a fecret Affent in the Hearts of two or more to the Defrauding and Prejudice of another, which often chocks a men Right, and the ill Manner makes a good Matter unlawful. As if one who has a just Cause of Action be of Covin to raise up a Ten't by Wrong against whom he may recover, fuch a Recovery may be avoided; for and tho' the Dissor's Endowment of one who has a good Title of Dower shall bind the Difs'ee, yet if the be of Covin to the Elde Diss'in, it shall not. If Ten't T. and his Diss Issue diffeise the Discontinuee to the Use of L. C Ten't T. and Ten't T. die, the Issue shall not pare be remitted as against the Discontinuee, tho against all others he shall, and shall deraign the first Warranty. A. and B. are jointly intitled to a real Action against the Dilfeifor's Heir, A. causes him to be diffeis'd by one against whom they both recover, B. only shall be remitted.

If the Estate be made by the Discontinue to the Husband and Wife on Condition,

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the Remitter as it defeats the Estate defeats the Condition, &c. annex'd to it, yet the

Husband is estopp'd to plead it.

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If the Husband had discontinued the Wife's Land, and taken back a State to himfelf for L. Rem'r to his Wife for L. this had been no Remitter to her during the Hufband's Life, because while he lived she had no Freehold. But upon his Death the Freehold in Law cast on her against her Will had been a Remitter, (and yet no Affife lies for one that is oulted of a Freehold in Law,) for there is none against whom she could bring her Action, and the was Ten't to the Precipe; nor did her Power to waive fuch filter prevent the Remitter, tho' she was fold and of Age at the Time when the Free-bold was cast on her. So if Ten't T. have saile liste two Sons of Age, and he make a Lease If the two Sons of Age, and he make a Lease may to the Elder for L. Rem'r to the Younger for L. or T. and die, the Elder is not remitted because he agrees to the Lease, but there shall be a Remitter to the Younger, if the Elder die without Issue. So if the Heir of Diss'or make a Lease L. Rem'r to Diss'ee for L. &c. So if Ten't T. infeoff his Heir apparent and others by Deed, and make Livery to the others in the Heir's Absence, who never agrees, and the other die, and the Heir in his Father's Life never occupy nor take the Profits, and after the Father die, he is remitted. But it seems, that if the Son had said a Counterpart either in this Case or in the former, where a Rem'r was limited to the younger Son, or if Ten't L. had been impleaded, and made Desault, and he in Rem'r

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Vid. fupra, Rem'r had been receiv'd, he should not be remitted, because he agreed in the Father And the' the Statute of Glocester give Damages against him that shall be found Ten't of the Land, yet if a Deed of Feoff ment be made to A. B. and C. and Livery be given in C's Absence, and C never agre nor take any of the Profits, and they die and he furvive, and a Writ of Entry for Dis'in be brought against him, he may plead the whole Matter, and discharge himself o the Damages, for a Statute shall never be to Junconstrued, that he who is purely innocen

shall be damaged thereby.

And if an Abbot or Bishop had disconti nued, and Discontinuee had charg'd th Land, and afterward by Licence had in feoff'd the Abbot or Bithop, the Successo had should have been remitted and should have has

construed, that he who is purely innocen

holden the Land discharged.

If one recover against Ten't T. in a fall gain or feign'd Action, by Default, Nihil Dicit Ent Confession or Demurrer, and sue Execution and after Ten't T. disseite the Recoverer, and the feis'd, his Issue shall be remitted. For if the Recoverer, had continued seis'd, the Issue in a Formedon might have falsify'd the Recovery, and prov'd the Action feign'd in Law, and therefore he shall be remitted because there is none against whom he can bring his Action; and if Ten't T. against whom such Recovery was had, had died be fore Execution sued, and a Scire Facial has been brought against the Heir, he might been brought against the Heir, he might in pleading have shew'd how the Action life was less than the same against the Heir, he might been brought against the Heir, he might been brought against the Heir, he might be the same against the heir be the same against the he

was feign'd or false, and barr'd the Demandant.

An Action is false when the Words of the Writ are false, as when they suppose a Dis'in where there was none: An Action is hid to be feign'd, when tho' the Words of the Writ are true, yet by Reason of a Relafe or some such Matter, the Demandant has no Right to recover.

If Land be recovered against Ten't T. the Iffue cannot falfify in the Point tried by the be for fury, tho' all the Jurors be dead, so that he an't have an Attaint; but he may falsify the Recovery by Pleading some Matter

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which Ten't T. did omit, or he may confess
the and avoid the Point tried.
If in a common Recovery Judgment be
cesso and against Ten't T. where he vouches, and
have the Judgment to recover over in Value, tho
the die before Execution, yet may it be sued

the die before Execution, yet may it be sued a fall gainst the Issue in Tail, for the Right of the Dicit Entail is bound by the Judgment to recover over ution invalue in Respect of the intended Recompender, and Recovery had against Ten't L. whether d, the with or without Title, and Execution had, y'd the discontinues the Rev'n or Rem'r, but if he can'd it be of Covin and consent to the Recovery, in suffer a Common Recovery, he forfeits he can as Estate. And by 14 El. 8. full Remedy against 8 provided for the Entry of him in Rev'n ied be to Rem'r, tho' the Action were not brought ias had gainst Ten't L. himself, but against his Granmight, and he came in as Vouchee, but if the Action Ment of him in Rev'n or Rem'r appear of was Record, the Ten't L. is guilty of no Forseiture,

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ture, but such Assent must appear on the fame Record on Voucher, Aid-preyer, o Receipt of him in Rev'n or Rem'r, and no by any extrajudicial Entry, or Memorar dum, nor does the faid Act extend to th Case where Ten't L. is impleaded, an vouches him that has the immediate Rem in T. who vouches over the Common Vou chee.

If Ten't T. discontinue and die, and the Issue bring a Formedon against the Discont nuce, who pleads Non-Tenure, and utter disclaims in the Tenancy, Judgment shall ! that the Ten't go without Day, and the D mandant may enter notwithstanding the Discontinuance. So if a Dissee bring Writ of Entry sur Dis'in against the Di feisor's Heir who disclaims, the Diss'ee ma enter, and shall be remitted, or rather sha recontinue the former Estate, for in the Cases the Demandant has no Right to tw Estates; what is here said of Non-Tenu pleaded, must not be understood of a Simple Pl of Non-Tenure, but of Non-Tenure pleaded mi a Disclaimer, for the Plea of Non-Tenure s nifies no more than that the Ten't has not t Freehold which may be true, yet he may have Rev'n in Fee expectant on a State L. so that that Case, the Demandant re-entring should n

3 Lev. 330. be remitted to the whole Fee.

In Formedon if the Ten't disclaim, thure Demandant can't aver his Writ, but may and pray his Judgment and enter, but who good Damages are to be recovered, the Demai If dant may aver that he is Ten't, as the Wran A fupposes for the Recovery of the Damage nuce or may relinquish the Averment, and enter into the Land because of the Disclaimer.

N. B. In the Case above, Judgment is and Tenens eat fine Die, and the like Judgment is given when Excommunication is pleaded in disability of the Plaintiff, or when Judgment is given for the Ten't on any Plea in Bar, or to the Writ; and the Entry of the Judgment against the Plaintiff always is quod nibil Capiat per Breve, whether the Plea went in Bar or to the Writ, and it appears by the Record on what Plea the ludgment was given.

A general Averment is that which is used in the Conclusion of affirmative Pleas, which is in this Form, boc paratus eft Verifeare, a particular Averment is when the Life of Ten't L. or T. is avouched, which is call'd in Averment, tho' the words Verificare,

Oc. be not used.

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Where the Entry of a Man is lawful other in Respect of a Dissin, Gc. or of a forfeiture, and he takes an Estate in Fee, Tail, or for L. or Y. yet he is remitted, tho he be of full Age, and openly fay in the Country that he claims nothing in the Land but by force of such Conveyance; but if he dishave that claim in a Court of Record that he has no sold n Estate but by Force of such Lease, &c. he is claim in a Court of Record that he has no concluded; foif he take an Estate by Indenn, the ture, for that is the Deed of both Parties, at ma and a Rent or Condition therein referved is whe sood.

Demai If a Diss'or suffer a Stranger to usurp to e Wi an Advowson appendant, or the Disconti-amage nuce of a Mannor grant away the Advow-

son in Fee, yet the Diss'ee or Issue by recontinuing the Mannor, re-continue the Adyowson. A Patron is outlaw'd, the Church becomes void, six Months pass, K. recovers in Quare Impedit, this re-continues the Adyowson to the Patron.

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If two Jointenants, one of Age, the other within Age be differs'd, and the Difs'or die seis'd during the Nonage of one of 'em, and the Heir let the Land to them both being then of full Age for L. this is a Remitter to him whose Entry was lawful, not to the other.

Where Parceners or Jointenants have the fame Remedy, and one enters, the other shall enter also, so where the Entry is not lawful, and they join in a real Action, and one is summoned and severed, and the other recovers, both shall enter; but when their Remedies are several, as when two Parceners are disseised, and the Dissor dies seised, and then the Parceners die, and the Issue of one of em recovers, the Issue of the other shall not enter with her.

A. and B. Jointenants in Fee are dissisted by the Father of A. who dies seis'd, A. being his Heir enters, he is remitted to the Whole, and his Companion shall take Advantage of it, tho' in the Case above, the Jointenant who was disses'd in his Nonage shall only be remitted, for the Advantage which the Law gives him, is sounded rather on his Insancy, which is Personal and peculiar to him, than on his Right, but in this last Case the Right of Entry which B. had in Jointure with A. shall not be lost by a Descent to A. in respect of the Privity between em.

But if the Grandfather had been the Diffeifor, and the Land had descended from him to the Father, and from the Father to A. B. should not enter with him, for the Entry was taken away by the first Decent.

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And in the Case above, if the Infant lointenant had furviv'd his Companion afin the Descent to the Heir of the Diss'or, ome fay he should have entred into the Whole, because he is now in Judgment Law folely in by the first Feoffment, and laims nothing from his Companion, whose Right Co. L. 185.

Entry was bound by the Descent.

## Of Warranty.

WArranty is a Covenant real, annex'd to Lands or Tenements, whereby one is ound to warrant the same, and either on deisd the Value of those Evict-leisd the to the Value of those Evict-deisd the to recover Land which he is bound warrant, the Ten't may plead the War-leige of dat Lamari, which is call'd a Rebussion of the Country in Bar, which is call'd a Rebussion of the C who Diggin all Warranties not commencing Diss'in, which descended to the Heirs be rehim that made 'em, barr'd the Heirs to Law mand Land against 'em.

fancy. There are likewise contracts, &c. annex'd chartels, not here treated of; but what ight here spoken, is to be understood of War-defended, &c.

of the by the Statute of Glocester, Ch. 3. these

Bu ings are provided. 1. If Ten't by Curtefy,

tefy, or Husband seis'd in Right of his Wise, alien with Warranty, and die, this shall be no Bar to the Heir in a Mortdancester without Assets in Fee; but if Assets descend to him from the Father, he shall be barr'd, having Regard to the Value thereof. Tho' the Writ of Mortdancester only be mentioned in this Part of the Act, and after Writs of Aiel, &c. only, yet other the like Writs are within the Purview of the Statute, for the said Actions are put but for Examples.

Tho' the Words be if Ten't by Curtely alien, yet if he release with Warranty to a Difs'or, it is within the Purview of the Statute: So if a Tenancy escheat to Ten't by Curtesy of a Seigniory, and he alien with Warranty, and die, this shall not bind the Issue, for these Cases are equally mischie

vous.

But Ten't in Dower by Alienation with Warranty, might bar the Heir till 11 H. 720. But an Estoppel on the Mother's Parbarr'd not a Claim as Heir to the Father as if Land were given to B. and his Wise and B.'s Heirs, and B. had discontinued in T. to C. and after his Death the Wise has recovered in a cui in vita, supposing that she had the Fee, and made a Feossment, and died and C. had died without Issue; the Issue B. was not estopp'd to bring his Formedon's Reverter, for Warranties are savoured, but Estoppels are odious.

The Heir of a Diss'or being a Feme, make a Feoffment with Warranty, and marries the Diss'ee; the Wise's Warranty shall rebut the Husband, tho' he claim not in her Right

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for it shall be presum'd that he has Land in her Right to the Value of that which he demands. which might be recovered from him and his Wife by Force of the Warranty, therefore he shall be rebutted to avoid Circuity of Action. If Husband and Wife demand the Right of the Wife, a Collateral Warranty of her Ancestor

is a good Bar.

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B. seis'd in Fee levied a Fine to the Use of himself for L. and after to the Use of Wife in special Tail for her Jointure: They levy a Fine, and fuffer a Common Recovery, and die; this has been holden to be within the Meaning, tho' out of the Letter of 11 H. 7. 6 e converso, a Case may be without the Meaning, and yet within the Letter; as if they both levy a Fine of the Land of the Wife, and Conusee render to 'em in special T. Husband dies, and Wife with a 2d Husband levies a Fine, this is out of the Meaning of the Statute, because the Land came originally from the Wife.

But before 4 & 5 Anna 16. Collateral Warranty of every other Ten't L. barr'd the Heir in Rev'n or Rem'r, not entring in the Ancestor's Life; but if he had entred for the Forfeiture, and avoided the Estate to which the Warranty was annex'd, the Warranty was avoided also; but by that Act all Warranties made by Ten't L. discending to him in

Rev'n or Rem'r, are void.

2. By the Statute of Glocester, if Assets after descend, the Ten't shall by Writ, (which must be Scire Facias,) out of the Rolls of the Justices, recover the Inheritance of the

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Mother: But in Formedon, if the Demandant recover for want of Assets at the Time of the Warranty pleaded, and after Assets descend, the Ten't shall recover the Assets, and not the Land entail'd; for if he should recover the latter, and after the Assets should be alien'd, his Issue might recover the Land entail'd again; therefore to prevent suture Occasions of Suits, the Judges resolv'd the said Diversity in the said Cases.

If the Ten't will be aided by the Statute, he must plead the Warranty, and confess the Demandant's Title, and pray that the Benefit of the Statute may be sav'd to him; but if he plead the Assets descended, and Issue be taken thereon, and sound against him, he loses all Advantage of the Statute by his

false Plea.

Warranty may be annex'd to Incorporeal Inheritances; and to a Rent newly created, and if the Land be evicted by an elder Title, the Grantee may be help'd by Warrantia cartæ; and a Warranty in Law is imply'd'in a Grant of a new Rent in Exchange, or for

Owelty of Partition.

B. seis'd of a Rent-Seck in Fee, takes a Wise, and releases to the Ten't, and Warrants tenementa pradicta, and dies, the Wise brings Dower for the Rent; the Ten't shall wouch the Heir of the Husband, for tho' the Release enur'd by way of Extinguishment, yet the Warranty extended to it, and by warranting of the Land, the Warrantor is bound to secure it to the Warrantee in the same Freedom in which it was at the Time of the Warranty

ranty made; and therefore all Rents, &c. iffuing out of it, that were suspended or discharged, are warranted also.

Warranty commencing by Dissin is so call'd, because regularly the Conveyance to which it is annex'd, works a Dissin, as when Lessee 7. or Ten't by Execution, or Guardian, make a Feossment with Warranty, Ge.

So where a Dissin, Abatement, or Intrusion, or Entry into Land escheated to the Lord before the Lord's Entry, &c. is made with Intent to make a Feosfment with War-

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Such Warranties shall never bar the Heir, whether the Wrong were done immediately to the Heir or not; therefore if the Father be Ten't L. with Rem'r in Fee to the Son, and the Father by Covin make a Lease Y. to the Intent that the Leslee may make a Feoffment to one to whom the Father shall make a Release with Warranty, and this be executed accordingly, it shall not bind the Son, for the Father was particeps criminis. B. gives Land in T. to a Brother, the Uncle disseises the Donee, makes a Feoffment with Warranty, and the Donee dies without Iffue, B. is not barr'd. Father and Son and B. are Jointenants in Fee, the Father makes a Feoffment of the whole with Warranty, and dies, the Son dies, B. shall avoid the Feoffment for the Son's Part as well as his own.

Tho' a Feoffment by Lessee T. work a Disseisin to the Lessor, yet it is a good Feoffment between the Parties, and against all Strangers except him that has Right; and the Feoffor and his Heirs may be vouch'd by Force of

it, and such Feoffment by the Lord being Lessee Y. of the Tenancy, shall extinguish the

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Seigniory.

Father and Son are Jointen'ts in Fee, the Father aliens the whole with Warranty, and dies, the Son shall avoid it for a Moiety: But if they had been Jointen'ts L. Rem'r to the Son in Fee, and the Son had enter'd in the Father's L. for the Forfeiture, he had avoided it wholly: But if he had not enter'd in the Father's Life, he shou'd have avoided it for a Moiety only before 4 & 5 Anne 16. hecause the Warranty commenc'd not by Dis'in, but for a Moiety. If they had been Jointen'ts L. Rem'r to the Father in Fee, the Son's Entry, tho' it shall re-continue his own Estate L. in the Moiety whereof he was diffeis'd, shall not avoid the Warranty of the Fee of the faid Moiety, because it was in the Father's Power lawfully to convey the fame.

An Infant, and B. being of Age, join in a Feotiment with Warranty of Lands whereof they are jointly feifed, the Warranty is good as to B. for the whole, for one may warrant more than passes from him, and void as to the Infant; for tho his Feofiment be but voidable, his Warranty taking Effect by Deed

only, is void.

368.

B. is seis'd of an House, and C. having no Title enters, claiming it to him and his Heirs; B. still abiding in it, the Law adjudges B. in Possession, for duo non possumt in solido unam rem possidere: And when two are in Tenements claiming by several Titles, he is in Possession that has Right to have the Possession

Possession: But if C. make a Feossment with Warranty to certain Barrettors, to have Maintenance from 'em, by reason of which B. leaves the House, (which must be before the Livery of Seisin, or otherwise the Livery is void,) this is a Warranty commencing by Disseisin.

A Barrettor is a Mover of Suits and Quarrels, in Courts of Record, or Courts Baron; or in the Country, Three Ways; 1. By Diffurbance of the Peace. 2. Taking or keeping Possession of Lands in Controversy, by Force or Subtilty. 3. Spreading falle Rumours and Reports to raise Discord among:

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Extortion, in a large Sense, is any Oppresfion under Colour of Right. Properly it fignifies any Officer's unlawful taking by Colour of his Office, any Fee not due, or more than is due, or before it is due. By W. I. no Minister of K. should take any Reward for doing of his Office but only that which the K. allows him, on Pain torender double to the Party, and to be punish'd at K.'s Pleasure, and this was an Offence fineable at Law. But latter Statutes: have allow'd 'em Fees in many Cases. It isno Extortion for inferior Officers of Courtsto have such reasonable Fees as have been by the Courts for their Attenallow'd dance.

Maintenance is an upholding of Quarrels and Sides, to the Hindrance of Common Right, and is Twofold: 1. In the Country, as by taking and holding Possessions, &c. which is punishable only at K.'s Suit. 2. In

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F. N. B. 172.

369.

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Court, and this either, 1st. By maintaining to have Part of the Thing in Plea, which is call'd Champerty; and against such Offender a Writ of Champerty lies grounded on Articuli Super Chartas, and the Offender Shall forfeit 10. K. the Value of what was purchas'd by him, and it seems that the Seller shall forfeit the same. Or, 2dly, By maintaining one Side without having any Part of the Thing in Suit, and for this an Action of Maintenance lies at Com-Or, 3dly, By labouring a Jury. tho' it be but to appear, or instructing them, or putting 'em in Fear; and this is call'd Embracery, and an Action of Maintenance lies against the Offender. If one give Mo-38 E. 3. 12. ney to any of the Jurors, a decies tantum lies against him, and such Jurors, at the Suit of K. or of the Party, or any Stranger. Nor is it material whether the Jury pass on his Side, or give any Verdict at all.

> By 32 H. 8.9. he that buys, fells, takes, or makes Promise, Grant, or Covenant, to have any Right or Title to any Land, Tenement, or Hereditament, whereof the Seller, or they from whom he claims, have not been in Posfession a Year before, shall forfeit the whole

Value of the Lands.

Any naked Right stripp'd of Possession is within the Statute, whether it be really a good Right, as that of a Diss'ee, or pretended only by a Stranger. So if it be a good Right coupled with a wrongful Possession, as if a Disee diffeise Disors Heir, and make a Feoffment before he has been a Year in Polfession.

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A customary Right to a Copyhold is within the Statute, and so is a Lease Y. for the Words are any Right; but a Lease r. made to try the Title in Ejectment, is not within the Statute, unless it be made to a great Man, or any other to sway the Cause.

But whoever has the absolute Ownership; lo as no other has jus Proprietatis, or Poffeffionis, may fell, tho' he has not been a Year in Possession. As if one be remitted, or recover on a former Title, or redeem a Mortgage, or being a Dissor gain the Re-

leafe of the Diss'ee.

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There is a Proviso, which the Law wou'd. have imply'd, That he who is in lawful Pofsession may take a Release of a pretended Right by any reasonable Means; and tho a Man's Possession be wrongful as by Difseisin, Oc. yet a Release to him is lawful. A Rem'r Man may lawfully get a Release or Confirmation of any Stranger having a pretended Right: But it is unlawful to take a Covenant, that when he has recovered he shall convey to him, for this is not a reasonble Means.

If a Man enter into Land to which he has no Title, and prefently make a Feoffment with Warranty or if he diffeise one with Intent to make a Feoffment with Wartanty, and afterward make fuch Feofinent, thele Warranties commence by Diffin; for in the 1st Case, que incontinenti funt inesse videntur; in the 2d, the Law couples the Intent, and Feoffment made in Purluance

thereof together.

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One suing a Juris utrum, or other Writ in the Right of the Church, shall not be barr'd by a Warranty of his Ancestor. And it seems also, that he shall not be barr'd in Assize, tho' it be brought of his own Seisin, and the mean Profits be to be recovered to his own Use, for the Freehold is the Right of the Church.

K. before W. 2. might be barr'd of a Poffibility of Reverter descending to him in jure Corona, by Warranty and Assets from a Subjects descending on his Body natural; for in all Likelihood those Lands will descend to the same to whom the Crown will descend, and consequently will be a good Recompence for the Loss of the Crown-Lands; but in the Case of the Parson, his Successor can have no Benefit of what the Pre-

decessor has in his natural Capacity.

A Warranty is faid to be lineal, whether it descend on an Heir lineal or collateral, if he on whom it descends might possibly have claimed the Land as Heir to him that made the Warranty. As when the Father feis'd in Fee makes a Feoffment with Warranty, and dies, and the Warranty descends to the Son: Or when the Father releafes with Warranty to the Grandfather's Diss'or, and dies, and the Warranty descends to the Son, for he can't convey to himself the Descent of the Land but by the Father. So if the elder Son release to the Father's Diss'or with Warranty, and die without Islue, and then the Father die, the Warranty is lineal, because the younger might have convey'd the Title to the Land from the elder. And note, that in these Co. L. 388. two last Cases the Warranty descends before the Right. But

371.

But if the Father diffeise the Son, and make a Feoffment with Warranty, this is collateral, for the Title which the Son has can't possibly descend from the Father; so if the youngest Son release to the Father's Disselsor with Warranty, and it descend on the eldest, for they that make these Warranties are collateral to the Title of the Land.

Warranty may be annex'd to any Conveyance whereby an Estate passes, or to a Release or Confirmation made to the Ten't of the Land by one who never had any Estate therein, but a Voucher by Force of such Warranty may be counterpleaded; and Quere, whether an Assignee can take Benefit

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If Ten't T. have Issue three Sons, and discontinue, and the middle Brother release with Warranty, and die without Issue, this is collateral to the eldest, and should have barr'd him, (before 4 & 5 Annæ 16. but by that Stainte all collateral Warranties of Lands, &c. by any Ancestor who has no Inheritance in the same, are void against the Heir;) but it is lineal to the youngest, and shall not bar him by Force of W. 2. 1. for he might possibly have convey'd to himself a Descent by Force of the Tail from the middle Brother, but the eldest could not. Hence note, That a Warranty which is lineal as to one, may be collateral to another.

A collateral Warranty did never give a Right, but only bound it, and therefore if it be determined or defeated, the Right revives. The Plaintiff may make himself a Title

372...

Title in an Affise by it, where the Right of

the Ten't is bound by it.

By 32 H. 8. 36. a Fine with Proclamations, levy'd by Ten't T. bars the Estate T. but not the Rev'n or Rem'r, if Claim be made within five Years after the State T. spent. A Gift in T. is made to the eldest Son, Rem'r to the Father in T. the Father dies, the Son levies a Fine with Proclamations, the first Estate T. and Rem'r also are barr'd, for the Rem'r descended to the Son.

A Fine with Proclamations by the Ten't of the Land, bars the Right of an Entail, if he that has Right to the Entail claims not

4 H. 7. 24. within five Years.

26 H. 8. 13. If Ten't T. in Possession, or he that has a 33 H. 8. 20. Right of Entry be attainted of High-Treason, the Land is forseited to K. and the Entail barr'd.

A Common Recovery bars all Entails, but fince 34 H. 8. 20. it is not in the Power of Ten't T. of the Gift of the Crown, by any Act or Thing had, done, or suffered by him, to bar an Estate T. whereof the Rev'n or Rem'r shall be in the Crown.

But if K. have granted away the Rev'n in Fee, or if the Estate T. were made originally by a Subject, or by K. before he was

K. it may be barr'd.

A Common Recovery never could bar a Rev'n in K, and fince the Statute if K, make a Gift in T. Rem'r in T, as the Estate in Posession cannot be barr'd, so neither can the Rem'r.

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Those Words in the Statute where the Rem'r shall be in K. are not void; for if the K. for good Consideration procure a Gist in T. to be made to a Subject, Rem'r to himself, this Rem'r is within the Act, if it be in Fee or T. not for L. or T. only.

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Tho' such Ten't T. can't bar the Entail by any Act done or suffer'd by him, yet it may be barr'd by Acts to which he is not privy; as if a Diffeisor levy a Fine with Proclamations, and five Years pass, or if a collateral Ancestor had released with Warranty before 4 5 Ann. 16.

The Act extends to Gifts in T. made fince the Statute, for they are in equal Mischief, tho it only mention Gifts in T. made before.

A Recovery in a Cessavit, or Writ of Rightwithout Voucher, are not Bars of any Estate. Tail.

If Ten't T. be disseised, have Issue and die, and his Uncle release with Warranty, and die without Issue, the Warranty is collateral to the Issue in T. because he can't convey. himself to the Entail by means of his Uncle; and such Warranty did bar the Issue to demand the Land before 4 & 5 Anna 16.

The Reason why a Warranty was a Bar at Common Law, was for that Nemo prasumitur alienam posteritatem sua pratulisse. And no Proof is admitted against this Presumption; (and tho lineal Warranty aster W. 2. was holden to be no Bar without Assets, yet it was holden that collateral Warranty remained after the said Statute as it was at Common Law:) So if the Lord make an Acquittance for the last Rent, all the rest is presumed to be paid, and

373

1 Sid. 44. 1 Lev. 43.

Vid. 1 Saun.

285, 286.

Presumption; for it can't be imagined that the Lessor, who is not bound to give any Acquittance, should voluntarily by his solemn Deed acquit the Ten't of Rent due on a latter Day, if he were in Arrears before: But where a Ten't is in Arrears, and Lesfor distrains, and avons for Rent due the last Day of Payment, this shall not estop him to demand Rent due a former Day; for perhaps he might not punctually be certain how much was due, and therefore willing to demand no more at first than he was secure of recovering, and bring a new Action afterwards for the rest. If a Man 2Lut. 1173. be within the Four Seas, and his Wife have a Child, the Law presumes it to be his. a Man be found to have fled for Fear of Fefony, he forfeits all his Debts and Chattels, tho' he be after judicially acquitted of the Felony, and no Proof can be against the Presumption grounded on his Flight; nor does he deserve any Favour from the Law who will not suffer himself to be tried by it; but the general Rule is, Stabitur prasumptioni donec

> Ten't T. has Issue two Daughters, and dies, the eldest enters into the whole, and thereof makes a Feoffment with Warranty, and dies without Issue; this is collateral to the youngest as to the one Moiety which belong'd to her, and lineal as the Moiety be-

longing to the eldeft.

probetur in contrarium.

A Parcener by entring into the Whole, Vid. fupra, devests not the Moiety of the other; but if

The claim the Whole, and take the whole Profits, this does devest the other's Moiety; but the cannot after an actual Entry by her

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Companion, devest her Moiety without an actual Ouster: And it may be ask'd, How the Warranty in the Cate above, could bind, feeing it was annex'd to a Feoffment, which did work a Wrong? The Answer is, When one Sifter enters into the Whole, and makes a Feoffment of the Whole, the Subsequent Act fo far explains the first Entry, that now by Construction of Law she was at first itis'd of all,

Ten't in Special T. has Issue a Daughter, his Wife dies, he marries again, and has Iffue another Daughter, and discontinues; a collateral Ancestor releases with Warranty, which descends on both Daughters, the elder was wholly barr'd, for the Warranty is

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By Force of W. 2. lineal Warranty without Assets, is no Bar of an Estate T. but it is still a Bar to an Estate in Fee, and collateral Warranty was a Bar both of a State in Fee, and T. with or without Affets, before 4 & 5

Affets requifite to make a lineal Warranty a Bar, must be of equal Value with the Land which it bars one to demand, and descend from the same Ancestor that made the Wartanty, and it must be a real Inheritance in State or Interest; not a bare Use, or a Right of Entry or Action, which are not Affets till they are reduc'd to Possession: But a Rent issuing out of the Heir's Land descending to him, whereby it is extinct, is Affets. An Advowson is Affets, and may be extended at the Rate of a Shilling for every Mark of the

375.

Yearly Value of the Living. A Seigniory in Frankalmoigne is not Assets, because it is not

valuable.

Land is giv'n to Husband and Wife in Special T: he makes a Feoffment, and dies, the releases with Warranty, and dies, this is lineal as to the Whole; and the Law is the same if the Gift had been before Marriage, in which Case they had taken by Moieties, for the Heir must claim as Heir of both their Bodies.

A. B. and C. are Brothers, a Gift is made to A. in T. Rem'r to B. in T. Rem'r to C. in T. A. discontinues with Warranty: This is collateral to the Brothers, because the Rem'rs are their Titles, and to those A. is collateral; and it seems that such a Warranty does still bar the Rem'rs, because it is not within 4 & 5 Annæ 16. which speaks only of Warranties made by them who have no Estate of Inheritance in the Land, &c. Sed Q. If a Warranty made by the Donor shall be a Bar, inasmuch as tho it be collateral, and made by an Ancestor who has an Inheritance in the Land, yet the Estate of the Donees doth not depend on the Donor's, but his on theirs.

376.

Warranty always descends to the Heir at Law of him that made it, therefore if an elder Brother be Ten't in Tail Male, Rem'r to the younger, and make a Feoffment with Warranty, and die, leaving a Daughter; the younger is not barr'd, because the Warranty does not descend on him.

If the Warranty descend on one, and the Land on another, as special Heir, viz. by

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Custom of Burgh Eng. or Gavelkind, or Heir on the Part of the Mother; the Heir at Law may either be vouch'd alone, or the other may be vouch'd with him as Heir to the Land; and it seems that if there be a Warranty Paramount, they shall join in deraigning it, and the Recompence shall go to the special Heir alone, for he only had the Loss. So if a Recovery be had against Ten't T. and his Wife, and they vouch, and have Judgment to recover in Value, he dies, his Issue only shall sue Execution, tho' the Wife was privy to the Judgment.

Bastard eigne shall be vouch'd alone, for he is Heir in Appearance by taking the Pro-

hts, and shall not disable himself.

But a Personal Lien descends on all the Heirs, as if an Obligor die seised of Gavelkind Land, Debt lies against all his Sons.

And Debt on the Ancestor's Bond may be maintained against the Heir of the Mother's

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If Land be given to A. and the Heirs Males of his Body, Rem'r to the Heirs Female of his Body, (in which Case all the Issue Male shall first take, and the Estate to the Females is in Rem'r;) Donee make a Feossment with Warranty: This is lineal to his Daughters as well as Sons; for wherever the Ancestor takes a State L. and after in the same Conveyance there is a Limitation to any of his Heirs, the Inheritance vests in the Ancestor. But in this Case Warranty made by a Brother, is collateral to the Sisters.

If Land be given to the eldest Son in T. on Condition, that if he or his Issue shall alien in Fee or T. &c. that then their Estate shall cease, and be void, and that the Land shall immediately remain to the 2d Son in T. & sic ulira, the Rem'r to the other Sons, and Livery be made accordingly, these Rem'rs are void.

378.

r. Because every Rem'r commencing by Deed ought to vest in him to whom it is limited, when Livery is made to him that hath the particular Estate. But when Land is rendred by Fine for L. Rem'r in Fee or T. the Rem'rs are not in 'em in Rem'r, before the particular Estate is executed. And when a Rem'r on a Lease L. is limited to the Heirs of F. S. then living, it is not possible that it should vest while 7. S. lives; but it is sufficient that the Inheritance passes presently out of the Lessor. So if a Lease L. be made to A. B. and C. and if B. furvive C. then the the Rem'r to B. in Fee; this is a good Rem'r, for it depends on a Limitation of Time, viz. the Possibility of the Death of one Man before another, which is a common Possibility.

One makes a Lease L. with Condition to have Fee, and warrants the Land in forma predicta, &c. The Condition is perform'd in the Lessor's Life, or after his Death, the Warranty encreases with the Estate, for there was a present Estate on which it might enure; and the whole vests in the Lessee in such manner as if it had pass'd by the Livery. But if a Seigniory be granted for r. on Condition to have Fee, with Warranty in

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forma predicta, the Warranty shall not extend to the Fee, because the first Estate was not capable of a Warranty: So if one make a Lease ?. Rem'r in Fee with Warranty in forma pradicta, Rem'r Man can take no Benefit of the Warranty, because he is not Party to the Deed; and if he were, he could not take immediately, because named after the Habendum; and he can't take Benefit of it by may of Rem'r, because the Lease Y. is not cabable of a Warranty. If Land be giv'n to A. and B. Rem'r to the Heirs of him that shall die first, with Warranty in forma pradittà; A. dies, his Heir shall have the Warranty, and shall have the Land as Heir, tho' the Fee vested not in A. and he had but a Possibi- Cc. 1.26.2. lity.

2. The Rem'r in the Case aforesaid is void, because the same Alienation that transfers the Fee and Freehold to the Alienee, and devests the Donor's Rev'n, can't velt a Rem'r in the 2d Son: As if a Lease L. be made with Condition, that if Lessor grant over the Rev'n the Lessee shall have Fee, and the Leffor grant the Rev'n by Fine, the Lessee can't have Fee, for the same Alienation can't vest an Estate of the same Land in feveral Persons at once. 7. S. grants the next Presentation of a Church, and before it becomes void, grants the next Presentation of the same Church to another, the 2d Grant is void: But if the Patron take a Wife, and grant the 3d Presentation and die, and the Heir present twice, and the Wife the 3d Time, the Grantee shall have the 4th Preientation;

691.

fentation, for the 3d was given to the Wife by Act of Law, and the 3d Presentation in the Grant, shall be taken for the 3d which (a) Cro. Ja. he lawfully might grant. Sed Q. (a) How one can take any other Turn by a Grant of the 2d or 3d Turn, which can by no means be brought

within those Words.

3. In the faid Case those Words on Condition, &c. that the Estate shall cease, give a Re-entry to the Donor only, and the Words Subsequent are void. Father makes Gift in T. to his eldest Son, Rem'r to the Youngest, with such Condition as is in the Case in Question, the Eldest makes a Feoffment with Warranty, Father dies, and then the Eldest dies without Issue, the Youngest shall enter, for the Condition, by Force whereof the Father might have enter'd, descending to the Eldest was but suspended; nor can the eldest Son's Feoffment with Warranty in the Father's Life bar the youngest Son of his Entry by Force of the Condition, which depending on the original Deed, binds the State of the Land into whose Hands soever it comes, and can't be devested or barr'd by a Warranty; yet if the eldelt Son diffeise the Father and make a Feoffment with Warranty and die, he bars the Youngest, because the Father's Estate in the Land being devested and turn'd to a Right, was consequently capable of being barr'd by a Warranty: And where the eldelt Son is bound not to discontinue on fuch Condition as is aforefaid, if he make a Discontinuance after his Father's Death, the Condition is extinguished, for it was in him as Heir was

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to his Father at the Time of the Feoffment, and was as much releas'd by it as if he had expreshy

releas'd it by Deed.

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At Law, if Ten't in Dower had alien'd with Warranty during the Nonage of the Heir, and died, this had not barr'd his Entry, but if he had come to full Age before her Death he had been barr'd, for it was his folly not to enter and defeat the Warranty; and tho' in the first Case his Entry were not barr'd, yet if he had brought an Action he should have been barr'd in it; and if his Entry were taken away when the Warranty descended, his Right was bound by it. And the Law was the same as to a Feme Covert. But Laches shall not be imputed to an Infant to take away his Entry in respect of a former Right by a Descent, or to bar his Right where his Entry is congeable. But he shall fubject to all Conditions, Charges and Penalties growing out of the Original Conveyance, and a Cessavit lies against him for Land of his own Purchase, and likewise for Land by Descent, but in the latter Case he shall have his Age. Matters of Record, as a Fine levied by an Infant or a Recovery luffer'd by him, or a Statute acknowledg'd by him during his Nonage appearing in proper Person, shall never be revers'd after his full Age, but only by Writ of Error, or Audita Querela brought during his Nonage, which in that Case can be tried by Inspection only, for the Law will not give Credit to any Averment so Derogatory from the Honour of those who are presumed to act with the greatest Integrity,

Integrity, and will admit of no Evidence less than that of Sense in a Matter of so high a Nature; but if an Infant appear by Attorney, and a Recovery be had against him, he may avoid it by Writ of Error for this Cause after his full

(a) Cro. E. Age, for (a) whether he were within Age when 569. he made the Warrant of Attorney shall be tried by the Country, and the reversing such Recovery no way reflects on the Honour of the Court; (b) 1 Syd. but if an Infant appear by his (b) Guardian,

(b) 1 Syd. 322. Hob. 224.

and the Court knowing him to be an Infant after Examination had of the Circumstances, admit him to levy a Fine, &c. This shall never be revers'd either during his Nonage or after.

If Land had been given to the Husband and Wife in Fee, before 32 H. 8. 28. and the Husband had made a Feoffment, and a collateral Ancestor of the Wife had releas'd and died, and then the Husband had died, this so bound the Wife's waiveable Right, that she could not waive it, and claim Dower.

is thus provided, the Heir after the Death of the Father and Mother shall not be barr'd to demand the Heritage or Marriage of his Mother, which his Father alien'd in his Mother's Time, whereof no Fine is levied in the K.'s Court. And this Exception has been construed to extend only to a lawful Fine, i. e. one levied both by Husband and Wise, and not to one levied by Husband only, for these Reasons.

of a Statute by another, and by this Act the

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Alienation of Ten't by Curtefy by Fine with Warranty is restrain'd, therefore it shall be intended that the Alienation of the Husband alone seis'd in Right of his Wife was design'd to be restrain'd also.

2. The general Words of a Statute shall be intended of a lawful Act, but a Fine by Husband alone works a Wrong to the

Wife.

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3. A Fine by the Husband alone is within the Mischief design'd to be remedied by the Statute, which was that the Heir should be barred of the Inheritance of his Mother by the Father's Warranty without Assets.

An express Warranty of a Freehold or Inheritance can be created only by the Word Warrantizo in Latin, or Warrant in English, for Warrantizahimus is the only Word in a Fine, which is ever used to this

Purpose.

Tho it be not express'd to whom the Warranty shall extend, yet the Law by Implication gives the Benefit of it to the Feoffee.

A Bond with Condition to defend such Land to A. for 8 Years is forseited if a Stranger oult him without Action; but if it were on Condition to warrant the Land, it shall not be forseited unless the Obligee be impleaded, and then the Obligor must be ready to warrant, &c.

The Words, Grant, Demise, and the like in the Conveyance of a Chattel Real create a Warranty in Law, by Force (a) whereof the (a) 4 Rep. Grantee, if evicted, shall in an Action of Cove-80.

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At Law if one had given Lands in Fee by the Word Dedi, to hold of himself and his Heirs, the Feoffor and his Heirs were bound to Warranty, but if he had given them to hold of the chief Lord, he was bound to Warranty during his own Life only, as a Feoffor by the Word Dedi is at this Day. If the Feoffee recover in value by Force of fuch an implied Warranty, or of an express Warranty made for the Life of the Feoffor only, he shall have a Fee in the Land recovered, because the Warranty while it consinues, extends to the whole Estate of the Land. make a Lease L. or Gift T. rendring Rent, not only the Donor and Leffor and their Heirs, but also their Assignees of the Rev'n are bound to warrant the Land to the Leffee and his Assigns: And if the Lessor also add an express Warranty, yet the Warranty in Law remains, and the Lessee has Election to use either; in like manner, if a Feoffor by the Word Dedi add a special Warranty against J. S. and his Heirs, yet Dedi gives a general Warranty against all Men, during the Life of the Feoffor. For the express Warranty shall not take away that implied by Law, where they may both well stand together, and it is manifest that the express Warranty is added to give the greater Security to the Feoffee or Lessee. (a) But where one makes a Lease Y. by the Words Grant, Demise, &c. and covenants that lesce the Lessee shall enjoy the Land without any Evi-Etion from the Lessor or any claiming under him, Rev

(a) 4 Rep.

in this Case the Lesson shall not be bound to warrant the Land, by the imply'd Warranty, against an Eviction by a Stranger, for those Words can be of no Force, unless they be taken to explain bow far the Lessor shall be bound to Warrant, and where it expresty appears how far the Parties design that the Warranty shall extend, the Law will not carry it farther by Construction of those Words which are generally used as Words of Courfe. HILL

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Endowment implies a Warranty, viz. that the Ten't being impleaded shall recover in value on Voucher the 3d of the two Parts whereof the is Dowable. And Homage Aunceltrel, Exchange, and Partition imply a Warranty, but the Affignee shall not vouch by Force of these Warranties, but in case of an Exchange, Partition and Feoffment by Dedi, he shall rebut, but the Assignee of Ten't by Homage Auncestrel, shall neither vouch nor rebut the Lord, for the Advantage given to the Ten't in respect of the long Continuance of the Tenure can't be transferred to any Stranger.

Warranty in Law and Affets in some Cases, are a good bar in Formedon; as the len't may plead that the Ancestor exchang'd the Land demanded with the Ten't for other land, which descended to the Demandant, whereunto he hath entred and agreed; or if te hath not entered and agreed, then he may plead the Warranty, and other Aflets escended. But if Ten't T. make a Gift in Rev'n and Rent that not bar the Isue in a formedon, because the Delign of the Formehim, 1/1 don

don is to defeat the Rev'n and Rent, and non potest adduci exceptio ejustem rei, cujus petitur Dissolutio, but the Warranty in Law with other Assets is a good Bar.

Warranty in Law binds the Heirs of him that made it, but Warranty in Deed does

An express Warranty can't be created by

not unless they be named.

Will, because a Man can't bind his Heirs to warrant, any more than he can bind his Co. L. 386. Heirs to pay Money, unless he be bound himself, but a Warranty in Law may be by Will, as when one devises Land for L. or in T. rendring Rent.

Warranty in Law in some Cases extends only to Execution in Value of special Land, as in case of Exchange and Partition, and it may be created without Deed, but express

Warranty cannot.

An express Warranty extends neither to the Heirs nor Assigns of the Feossee, unless they be named; but if B. be inseoss d with Warranty to him, his Heirs, and Assigns, and inseoss C. and his Heirs, and C. die, the Heir of C. shall vouch as Assignee to B. So if B. and C. be inseoss d with Warranty to them, their Heirs, and Assigns, and they both die, and the Heir of the Survivor inseoss D. he shall vouch as Assignee to B. and C. for the whole Estate to which the Warranty was annex'd is lawfully conveyed to him, and Assignees of Heirs, and Assignees of Assignees, and Heirs of Assignees are comprehended under the Word Assignees.

The Father is infeoff'd with Warranty to him and his Heirs, and infeoffs his eldest Son with Warranty and dies, the Law gives the Son Advantage of the Warranty made to the Father, because that made to him by

the Father is extinct by Act of Law.

But Covenants Real often go to an Affignee, tho' he be not named, as where a Parcener on Partition covenants to acquit the other of a Suit issuing out of the Land; Or when a Parson covenants with the Lord of the Mannor of A. to celebrate divine Service in a Chappel, Parcel of the said Mannor, weekly for the Use of the Lord and his Servants, for these Covenants are in a manner appurtenant to the Land. But if such Covenant had been with a Stranger, the Marior, because the Covenante was not serve of the said of the Covenante was not serve of the covenante

The Affiguee of Part of the Land Hall wouch as Affiguee, but an Affiguee of part of the State as Leffee or Dones and he Leffee may pray in Aid of the Leffer, and the Leffee or Dones may vouch the Leffe or Gift the Rem'r in Fee be limited over the Leffee or Dones may vouch as Affiguee.

If one make a joint Feoffment with Warranty; and the Fointenants make Partition by Confent, the Feoffor shall not be bound to warrant their Vid. supdivided Estate. Three are jointly infeoff'd 2511 with Warranty to them, and their Heirs; and one releases to the other two, they shall

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vouch; but if he had releas'd to one alone he had extinguished the Warranty for a 3d Part, for as to that, the Release is in by the Release, not by the Feoffment. If two be infeoff'd with Warranty to them, their Heirs, and Assigns, and one of them make a Feoffment, the (a) Feoffee shall not vouch, but the other shall (b) vouch for a Moiety; so (c) if one of the Feoffees had releas'd to the Feoffer, the other shall vouch for a Moiety, for he shall not lose his Warranty by the Act of his Companion; and if there be two Feoffers with Warranty, and the Feoffee release to one of em, yet he shall vouch the other for a Moiety.

Feoffee with Warranty to him, his Heirs, and Assigns, makes a Gist T. Rein'r in Fee, Donee makes a Feoffment, his Frottee shall not conchas Assignee, because he comes not

In Priviley of Estate, but by Discontinuance worth is always by Wrong; but he may vouch his Feoffer, and his Feoffer may vouch as Assignce. But such a Feoffee may rebut, and so may any Ten't that claims under the Warranty, whether he come to the Land by Right or Wrong. But he that claims above the Warranty shall not rebut, as if two Brethren be infeoff'd with Warranty to the Elder and his Heirs, who dies without Issue, the Younger, tho' he be Heir to him, shall neither vouch nor rebut, for he claims not under his Brother but by the Survivor.

Donee with Warranty to him, his Heirs, and Affigns, makes a Feofinent, and dies without Issue, the Warranty is extinct, be-

cause

cause the Estate to which it was annex'd is spent. But if he had made such a Feossment before the Statute of Donis, the Warranty had remain'd, for then both the Donee and his Feossee had a Fee-Simple; but since the Statute, an Estate T. is look'd upon as a particular Estate, and the Donor who was adjudg'd to have but a Possibility of Reverter has now a Rev'n.

Warranty enlarges not an Estate, as if Dessor release to Lessee L. and warrant the

Land to him and his Heirs.

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Warranty never goes with Burgh Eng. or Gavelkind Land to the special Heir, nor can it descend to one of the half Blood, and neither collateral Warranty, nor lineal with Assets, did ever bind the Heir, &c. unless it

descended on him.

If two make a Feoffment with Warranty, and one die, the Survivor shall not be vouched alone, but the Heir of him that is dead also; but if a joint Obligation be made by two, and one die, the Action shall be brought against the Survivor only.

If there were two Brothers by diverse Venters, and the Eldest had releas'd with Warranty to the Uncle's Difs'or (before 4 & Anna 16) and died without Islue, the

4. Uncle

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Uncle was barr'd; but if he had died without Issue, the younger Brother might enter as Heir to the Uncle, for the Warranty shall not bar him, because he is not Heir to him that made it.

Ten't T. makes a Lease L. Rem'r in Fee, a collateral Ancestor confirms the Estate of Lessee, and binds himself and his Heirs to Warranty for Term of Lessee's Life, this barr'd the Entail for Term of Lise of Lessee only. For a Warranty may descend to ones Heirs for Term of another's Lise only, as Land or Annuity may be granted to one and his Heirs, for the Lise of T. S. which is the Internace but only

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Warranty is annexed, defeats the Warranty is annexed, defeats the Warranty is annexed, defeats the Warranty io, as if the Discontinues of Ten't I, were dissered, and a collateral Ancestor had releas'd with Warranty to the Dissor, this barr'd the Issue, but if the Discontinues had enter'd on the Dissor, the Bar was remov'd. So if such a Release were made to the Discontinues's Feoffee on Condition, and the Discontinues after had enter'd for a Breach, the Issue might recover.

Warranty may be a Bar to the Heir tho'it descend to him before the Right. And if a Lease L. were made to A. Rem'r to his next Heir, and A. had been disses'd, and had releas'd with Warranty, the Heir was barr'd before 4 & 5 Anne 16. tho' the Warranty stell,

fell, and the Rem'r came in Esse at the same Time.

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then the Warranty delcend, yet he is not bound by it, because he was in Possession when it was made. So if an Ancestor had released to my Ten't L, in Possession with Warranty, this never barr'd my Rev'n of Rem'r. And if a Woman Grantee of a Rent had married the Ten't, and a Stranger had released to the Ten't with Warranty, he never could have Benefit thereof as to the Rent, for the Wise's Estate therein was not displaced when the Warranty was made, and if the Wise or her Heir asterward bring an Astion for the Rent, it must be grounded on some Ast done after the Warranty was made.

But if Ten't T. of Rent disseise the Ten't of the Land, and make a Feofiment with Warranty, or if Ten't of the Land marry the Grantee of Rent, and make a Feoffment with

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with Warranty; in both these Cases the Feossee shall vouch as of Land discharg'd of the Rent, for the Warranty extends to all Things issuing out of the Land, and secures it in such Plight, as it was in the Feosser at the Time of the Feosser made; but inassemuch as the Rent is a Thing that lies not in Discontinuance, the Issue or Wise may distrain for it, and avoid the Warranty, for it is in their Election whether they will look on themselves as in Possession or not.

Warranty shall not bar meer Titles, as by Force of a Condition, assent to a Ravisher, Exchange, Go. nor Title of Dower, for these remain in their original Essence, and can't be displaced you in seems that it woman can't be barr'd of Dower by a Warranty yet the Ten't in Writ of Dower may vouch the

Feoffor, &cc.

In Actions which Lessee T. may have, a Warranty can't be pleaded in bar; but in those Actions when the Freehold or Inheritance come in Question, the Warranty may be pleaded. And Damages may be recovered by Force of a Warranty, if a Lease T. only be evicted from him to whom it was

made.

Ten't T. infeoffs his Uncle, the Uncle makes a Feoffment with Warranty, and takes back a State in Fee, and makes a 2d Feoffment without Warranty, and dies, the Issue is not barr'd, for the Warranty was extinct by his taking back a State in Fee; but if he had only taken a State T. or L. it had only

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only been suspended during the particular Estate, but in the first Case it is extinct, because no Man can warrant Land to himfelt.

A Man can never vouch as Affiguee to himself, and regularly a Man can't vouch himself as Assignce of another. But if Feoffee with Warranty to him and his Heirs, infeoff his eldert Son with Warranty, and die, it is faid that the eldest Son shall vouch himself, and his younger Brother being Heir of Burgh Eng. Land, because the Warranty betwist him and the Father; is determined by Act of Law, and it feems Vid. fupra, likewise that in that Case he may (a) vouch (a) Co. L. the Father's Feoffor. If a Feoffee with War- 384. ranty to hunfelf, his Heirs, and Ailigns, reinfeoff the Feoffer and a Stranger, or the Feoffor and his Wife, the Warranty remains, for the the Fee-Simple of the Warranty and of the Estate warranted meet in the same Person, yet another is jointly seis'd with him. who would be prejudiced if the Warranty should be extinct; or if two make a Feoffment with Warranty to the Feoffee, his Heirs, and Assigns, and the Feosfee reinfeoff one of them, the Warranty remains, for the other Feoffor may fill warrant the Lands to him that was his Companion, as well as to the first Ecoffee.

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Warranty, they marry, and are impleaded,

he shall vouch himself and her.

Infant in Ventre samere may be vouch'd if God give him Birth, if not, fuch a one Heir, but the Infant can't be vouch'd alone, for

Process shall be presently awarded.

Ten't T. makes a Feoffment with Warranty, and diffeises the Feoffee, and dies feis'd, leaving Affets, it is faid that this Juspended Warranty and Assets prevent the Remitter, and so every one's Right shall be fav'd.

If after the Release with Warranty, the Person that made it be attainted, or gain a Release of all Covenants, Demands, or Warnot barrd, because the

is committed, but id. fupra, ludgment only.

The Defendant waging Battle man of peal of Death, was flain, and Judgment was given that he thould be hanged, that the Lord might have his Writ of Escheat,

quia suspensus per Collum, &c. And in (a) da Contra, Eire some have been attainted after their Ha. P. C. Death by Presentment, Go. A Man is faid 16.

to be convict by Verdict, Confession, or Recreancy, but he is not attainted before Judgment. A Felon convict forfeits his Goods and Chattels, &c. but his Lands are

not forfeited, nor is his Blood corrupted be-

fore Attainder.

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If the Party arraign'd for Felony stand Mute, he shall be adjudg'd to pain Fort & Dure, but shall not be attainted; but if one arraign'd for High Treason stand mute, he shall have such Judgment as if he were con-

vict by Verdict.

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Felony ex vi Termini significat quodlibet crimen Felleo animo Perpetratum; Felonice can be expressed by no other Word; anciently Pardon of all Felonies extended to High Treason, but the Law is otherwise now; but all Petty Treasons, Murders, &c. are pardoned thereby; a Man sorfeits all his Lands in Fee, and Goods and Chattels, for such Felonies, for which he shall have Judgment to be hang'd, but he shall forseit his Goods and Chattels only for Felony by Chance Medley, se Defendendo, or Petit Larceny.

Piracy, tho it be Felony, was only punishable by Civil Law, before 28 H. 8. 15. and an Attainder thereof by Course of the Civil Law does not corrupt the Blood, but an Attainder by Force of that Statute does. A Pardon of all Felonies does not discharge Piracy, because it was a Felony whereof the Common Law took no Conusance, and the said Statute did not alter the Offence, but only ordained a new Way of Tryal,

and a new Punishment.

Attainder of Heresy or Pramunire corrupt not the Blood, yet Pramunire forseits Lands in Fee-Simple, but Heresy does not, where a Statute prohibits a Crime, sub Forseiture de corpore & de avoier, or sub foris sactura omnium, qua in potestate sua obtinet, or under

Warranty, they marry, and are impleaded,

he shall vouch himself and her.

Infant in Ventre samere may be vouch'd if God give him Birth, if not, such a one Heir, but the Infant can't be vouch'd alone, for

Process shall be presently awarded.

Ten't T. makes a Feoffment with Warranty, and differes the Feoffee, and dies feis'd, leaving Assets, it is said that this suspended Warranty and Assets prevent the Remitter, and so every one's Right shall be sav'd.

If after the Release with Warranty, the Person that made it be attainted, or gain a Release of all Covenants, Demands, or Warranties, the Issue is not barr'd, because the

Warranty descends not to him.
The forfeiture on an Indictment of Felony, shall relate to the Day on which it was committed, but on an Appeal to the

Vid. fupra, Judgment only.

Pho Defendant waging Battle in an Appeal of Death, was sain, and Judgment was given that he should be hanged, that the Lord might have his Writ of Escheat, quia suspensus per Collum, &c. And in (a) Eire some have been attainted after their Death by Presentment, &c. A Man is said

Recreancy, but he is not attainted before Judgment. A Felon convict forfeits his Goods and Chattels, &c. but his Lands are not forfeited, nor is his Blood corrupted before Attainder.

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(a) Contra,

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vict by Verdict.

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pain of being at K.'s Will, Body, Lands, and Goods, this extends not to Lois of Life or Member, but if the Words are *Jubeat judicium Vita* & Membrorum, fuch Judgment shall be given as in case of Felony, and the Blood shall be corrupted.

How far the Islue of one attainted shall

inherit, Vide supra, 11.

If Ten't T. be attainted for Felony he forfeits the Land for his own Life only, but if he be attainted for Treason he forseits the whole Inheritance by 33 H. 8. 20. If the Issue in T. be attainted, and then the Father die, he can't enter tho he be pardoned, because his Blood is corrupted.

392. A Seigniory is granted with Warranty, the Tenancy escheats, the Warranty is extinct, because the Seigniory to which it was

annex'd is determined.

There can be but one Recompence in Value on one Warranty, but there may be several Recoveries in Value, in respect of diverse Estates, as if a Diss'or infeosf Husband and Wise for L. and the Heirs of the Husband who aliens in Fee with Warranty, the Alienee shall recover in Value both in cui in vita by the Wise, and in Entry sur Diss'in by Diss'ee. So if one seis'd of Rent release to Ter-tenant and warrant the Land to him, and his Heirs, he shall recover in Value both as to the Rent, and Land, but for one and the same Estate he shall recover in Value but once.

If lineal Warranty and Assets descend to the Issue, and he alien the Assets and die,

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his Issue shall not be barr'd; but if he had brought a Formedon and been barr'd by the Warranty and Affets, his Issue shall be barr'd, tho' the Affets be alien'd afterwards, for a Formedon is a Writ of the highest kind Ten't T. can have.

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